

**GENERAL PROVISIONS FOR  
FIXED-PRICE DISMANTLING, DEMOLITION,  
OR REMOVAL OF IMPROVEMENTS  
ORDERS UNDER  
U. S. DEPARTMENT OF ENERGY  
PRIME CONTRACT NO. DE-AC09-96SR18500  
WASHINGTON SAVANNAH RIVER CO., LLC |  
SAVANNAH RIVER SITE  
AIKEN, SC 29808**

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*Change Bar indicates new article, a change in  
application, or that text of Article has changed  
from Revision 9*

*\* Incorporated by reference to appropriate FAR  
clause (see <http://www.arnet.gov/far/>) and  
DEAR clause (<http://professionals.pr.doe.gov/>)*

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**SECTION A**

**SECTION A APPLIES REGARDLESS OF THE VALUE OF THIS ORDER**

**A.1 DEFINITIONS**

Whenever used in this document with initial capitalization, the following definitions shall be applicable unless the context indicates otherwise:

A. "Contracting Officer" shall mean the Government official executing the Prime Contract No. DE-AC09-96SR18500 between WSRC and DOE. The Contracting Officer is the Government Official who is authorized to execute, administer, and terminate the contract,

and includes the authorized representatives thereof, when such individuals are acting within the limits of their authority as delegated by the Contracting Officer.

- B. "DOE" shall mean the United States Department of Energy or any duly authorized representative thereof, including any successor or predecessor agency thereof, including the Contracting Officer.
- C. "Government" shall mean the United States of America.
- D. "Head of the agency" or "Secretary" shall mean the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency.
- E. "Services" shall mean labor, direction of labor, production of technical information, consulting services or any other services furnished by Supplier and its Subcontractor under this Order.
- F. "Subcontract" shall mean any Purchase Order entered into by the Supplier or subcontractor calling for supplies and/or services required for performance, order modification, or subcontract.
- G. "Subcontractor" shall mean any subcontractor or supplier of any tier who supplies goods and/or services to Supplier in connection with Supplier's obligations under this Order.
- H. "Supplier" shall mean the person or organization entering into this Order with WSRC.
- I. "Supplies" shall mean equipment, components, parts and materials to be provided by Supplier and its Subcontractors pursuant to this Order.
- J. "Vendor Data" shall mean any and all information, data and documentation to be provided by Supplier and its Subcontractors under this Order.
- K. "Work" shall mean Supplies, Services, and Vendor Data provided by Supplier and its Subcontractors and all work performed with respect thereto, pursuant to this Order.
- L. "WSRC" shall mean the Washington Savannah River Company.
- M. "WSRC Purchasing Representative" shall mean a person with the authority to execute, administer, and terminate the order, and make related determinations and findings. The term includes certain authorized representatives of the WSRC Purchasing Representative acting within the limits of their authority as delegated by the Purchasing Representative.
- N. "Value of this Order" shall mean the amount set forth in the pricing schedule for the Demolition and Removal (D&R) work.

## **A.2 GENERAL**

The terms and conditions of these General Provisions and those set forth in the Washington Savannah River Company (WSRC) purchase order or subcontract apply notwithstanding any different or additional terms and conditions which may be submitted or proposed by Supplier, and WSRC objects to and shall not be bound by any such additional or different terms and conditions.

- A. This Order, which term shall be deemed to include related plans, drawings, specifications, and other documents, contains the entire agreement and understanding between the parties as to the subject matter of this Order, and merges and supersedes all prior agreements, understandings commitments, representations, writings, and discussions between them. Any prior obligations, conditions, warranties, or representations will bind neither of the parties with respect to the subject matter of this Order. The parties agree that recourse may not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of this Order.
- B. The failure of either party to enforce at any time any of the provisions of this Order or to require at any time performance by the other party of any of such provisions shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Order or any parts thereof, or the right of either party thereafter to enforce each and every provision.
- C. The headings used in this Order are not to be construed as modifying, limiting or expanding in any way the scope or extent of the provisions in this Order.
- D. All references herein to the Department of Energy Acquisition Regulations (DEAR) or Federal Acquisition Regulations (FAR) are those in effect on the date of this Order.
- E. In the event of an inconsistency between provisions of this Order, the inconsistency shall be resolved by giving precedence as follows:
  - (1) Purchase order;
  - (2) These General Provisions;
  - (3) Statement of work; and
  - (4) Other provisions of this Order, whether incorporated by reference or otherwise.
- F. Wherever references are made in this Subcontract to standards or codes in accordance with which the Work under this Subcontract is to be performed, the edition, or revision of the standards or codes current on the date the subcontract is signed shall apply unless otherwise expressly stated. In case of conflict between any reference standards and codes and

any Subcontract Document, the latter shall govern.

- G. Supplier shall perform all Work pursuant to this Order as an independent contractor. If any part of the Work is subcontracted, Supplier is responsible for having that subcontracted Work comply with the terms of this Order. No act or order of WSRC shall be deemed to be an exercise of supervision or control of performance hereunder. No provision of this Order and no action taken by WSRC under this Order shall be construed to make or constitute WSRC the employer or joint employer of any of the employees of Supplier or any Subcontractor.
- H. All questions concerning interpretation or clarification of this Subcontract, including the discovery of conflicts, errors, or omissions, or the acceptable performance thereof by Supplier, shall be immediately submitted in writing to WSRC for resolution. All determinations, instructions, and clarifications of WSRC shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. At all times Supplier shall proceed with the Work in accordance with the determinations, instructions and clarifications of WSRC. Supplier shall be solely responsible for requesting instructions or interpretations and shall be solely liable for any costs and expenses arising from its failure to do so.

### **A.3 SUBCONTRACTING**

- A. Supplier shall not subcontract all or substantially all of the Work without the prior written approval of WSRC. This provision shall not apply to purchases of standard commercial articles or raw materials on which Supplier shall perform further work.
- B. Supplier shall select Subcontractors on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Order.

### **A.4 CHANGES, EXTRAS AND SUBSTITUTIONS**

- A. WSRC may at any time, by a written change notice from the WSRC Procurement and Materials Management Department, and without notice to the sureties, if any, make changes, within the general scope of this Order. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Order, whether

changed or not changed by the order, WSRC shall make an equitable adjustment in (1) the contract price, (2) the time of performance or delivery schedule or both; and (3) other affected terms of this Order, and shall modify this Order accordingly. Any proposal by Supplier for adjustment under this article, together with such supporting information as WSRC may require, must be submitted in writing within thirty days from the date of receipt by the Supplier of the notification of change; provided however, that WSRC, if it decides that the facts justify such action, may receive and act upon any such proposal for adjustment at any time prior to final payment under this Order. Where the cost of property made obsolete or excess as a result of a change is included in Supplier's proposal for adjustment, WSRC shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute within the meaning of the article of this Order entitled "Disputes". However, nothing herein shall excuse Supplier from proceeding with this Order as changed.

- B. Any changes, extras or additional work made or performed by Supplier without the prior written approval of the WSRC Procurement and Materials Management Department shall be at the sole risk and expense of Supplier, there being no financial recourse against WSRC or the Government whatsoever.
- C. Supplier shall not substitute other equipment or materials for those specified in this Order, or vary the quantity of the Work, or otherwise make any changes in the Work, without prior written consent of WSRC.

### **A.5 APPROVALS**

The approval by WSRC of designs, work drawings, specifications, reports, or any other data submitted by Supplier hereunder shall not affect or relieve Supplier from any responsibility to furnish said items in full conformance with the requirements of this Order.

### **A.6 ASSIGNMENT**

WSRC may assign this Order to the DOE or to such party as DOE may designate to perform WSRC's obligations hereunder. Upon receipt by Supplier of written notice that the DOE or a party so designated by the DOE has accepted an assignment of this Order, WSRC shall be relieved of all responsibility hereunder and Supplier shall thereafter look solely to such assignee for performance of WSRC's obligations. Supplier shall not assign or transfer this Order or any interest herein, or claims hereunder,

without the prior written consent of WSRC or WSRC's assignee.

#### **A.7 WORKMANSHIP AND MATERIALS**

- A. Unless this Order specifies otherwise, the Supplier represents that all workmanship will be first class and the supplies and components, including any former Government property identified in this Order are new, including recycled (not used or reconditioned) in conformance with industry standards and are not of such age or so deteriorated as to impair their usefulness or safety. The Supplier shall not provide material or equipment that contains material that is known to be suspect or counterfeit (see paragraph E below). If the Supplier believes that furnishing used or reconditioned supplies or components will be in the Government's interest, the Supplier shall so notify the WSRC Purchasing Representative in writing. The Supplier's notice shall include a proposal for consideration by WSRC that states the reason for the request to use reconditioned or used supplies or components.
- B. Where items are referred to in the specifications as "equal to" any particular standard, WSRC shall decide the question of equality.
- C. If required elsewhere in this Order, Supplier shall submit for approval samples of, or test results on, any materials proposed to be incorporated in the Work before making any commitment for the purchase of such materials. Such approval shall not relieve Supplier of any of its obligations hereunder.
- D. All work under this Order shall be performed in a skillful and workmanlike manner. The Supplier agrees to utilize only experienced, responsible and capable employees, to include lower-tier subcontractors, in the performance of the work. WSRC may require that the Supplier remove from the job, employees to include lower-tier subcontractors, who endanger persons or property, or whose continued employment under this Order is inconsistent with the interests of security or safety at the Savannah River Site.
- E. **Suspect or Counterfeit Parts**
  - (1) Supplier's shall supply products at Savannah River Site that are not and do not contain suspect/counterfeit parts. A suspect item is an item in which there is an indication by visual inspection, testing, or other information that it may not conform to established government or industry accepted specifications or national consensus standards. A suspect/counterfeit item is any item that is a copy or substitute without legal

right or authority to do so, or one whose material, performance, characteristics or identity does not appear to be authentic and is verified to be either counterfeit or fraudulent. Failure by the supplier to document material substitution or identify that an item has been refurbished or remanufactured is considered to be fraud, and the item then becomes suspect/counterfeit.

- (2) If it is determined that a suspect/counterfeit part has been supplied, WSRC will impound the items pending a decision on disposition. The Supplier may be required to replace such items with items acceptable to WSRC and shall be liable for all costs relating to the impoundment, removal, and replacement. WSRC may also notify the local Department of Energy Office of Inspector General and reserves the right to withhold payment for the items pending results of the investigation.

#### **A.8 SUPPLIER'S INSPECTION REQUIREMENTS**

- A. Supplier is responsible for performing, or having performed, all inspections and tests necessary to substantiate that the Supplies or Services furnished under this Order conform to Order requirements, including any applicable technical requirements for specified manufacturers' parts. This article takes precedence over any WSRC inspection and testing required in the specifications, except for specialized inspections or tests specified to be performed solely by WSRC.
- B. Should tests in addition to those required by this subcontract be desired by WSRC, Supplier will be advised in ample time to permit such testing. Such additional tests will be at WSRC's expense.
- C. Supplier shall furnish samples as requested and shall provide reasonable assistance and cooperation necessary to permit tests to be performed on materials or Work in place including reasonable stoppage of Work during testing.

#### **A.9 WORK ON WSRC, GOVERNMENT OR OTHER PREMISES**

- A. As to the Work to be done or performed by Supplier on premises owned or controlled by WSRC, the Government, or the premises of other WSRC subcontractors, Supplier assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury

including death, or damage to property, sustained in connection with or to have arisen out of the acts or omissions of Supplier or its Subcontractors, agents, or employees. Supplier shall indemnify and hold harmless the Government and WSRC from and against any and all claims, demands, actions, causes of action including those brought by an employee of the Supplier or a State Industrial Insurance subcontractor under a Workers/ Workmen's Compensation Act or statute, suits, damages, expenses including attorney fees and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property attributable directly or indirectly to the acts or omissions of Supplier or its Subcontractors, agents, or employees arising out of, or in any way connected with the performance of this Order, whether or not caused in any way by some act or omission, negligence or otherwise, of WSRC or the Government; provided however, that the Supplier's duty to indemnify shall not arise if such injury, death, destruction or loss is caused by the sole negligence of WSRC or the Government. Nothing in the foregoing shall be construed to require Supplier to indemnify and save harmless the Government and WSRC from any liability arising out of or resulting from a nuclear incident. To the extent necessary to execute the foregoing indemnification and as permitted by law, Supplier specifically waives any and all immunity provided by any industrial insurance or Workers/ Workmen's Compensation Act or statute.

- B. When Supplier shall perform any part of the Work on the premises of the WSRC or the Government during the performance of this Order, the Supplier shall have in force and effect, policies of insurance conforming to the terms set forth in Paragraph C of this Article.
- C. (1) The Supplier shall procure and thereafter maintain at its own expense, the following insurance:
- (i) Workers' Compensation and Employer's Liability.  
Limits of Liability: Worker's Compensation: Statutory limits in the jurisdiction wherein the Work is to be performed.  
Employer's Liability: A minimum of \$1,000,000.
  - (ii) Comprehensive general liability including Bodily Injury and Property Damage.

Limits of Liability: A minimum of \$1,000,000 Combined Single Limit.

Endorsements: WSRC and the Government to be endorsed as Additional Insured.

Contractual Liability including all coverage endorsed on the basic policy.

- (iii) Automobile Liability including Bodily Injury and Property Damage including All Owned, Non-Owned and Hired.

Limits of Liability: \$1,000,000 Combined Single Limit

Endorsements: WSRC and the Government to be endorsed as Additional Insured.

- (2) Certificates of insurance evidencing that the requirements of this Article have been met shall be furnished to WSRC before work is commenced with respect to performance under this Order. Certificates shall identify on their face, the WSRC Purchase Order or Subcontract Number. In addition, a copy of the endorsements to insurance policies as required by paragraph C.(1)(ii) and (iii) above naming WSRC and the Government as "Additional Insured" shall be submitted with the certificate of insurance. Provisions shall be made for thirty days advance notice by mail to WSRC of change in or cancellation of such insurance. Certificates shall be issued by insurance carriers satisfactory to WSRC.
  - (3) In the event the Supplier fails to furnish such Certifications of Insurance, as required in Paragraph 2 hereinabove, prior to commencement of work or to continue to maintain such insurance during the performance of the Order, WSRC shall have the right to stop work and/or to withhold any payments or partial payments required to be made under this Order; and shall have the right to continue withholding any or all of said payments so long as the Supplier has not complied with the requirements of this Article.
  - (4) On contracts involving blasting or other hazardous operations, the Supplier's insurance shall specifically state that all blasting or such other hazardous operations are fully covered.
- D. Supplier agrees to comply with and require its Subcontractors to comply with all applicable laws, rules, and regulations with respect to state industrial insurance or Workers/Workmen's Compensation, occupational disease, occupational safety and health, or withholding

and payment of social security and federal and state income taxes. Supplier further agrees to indemnify WSRC and the Government against, and to save and hold harmless WSRC and the Government from, any and all liability and expense with respect to claims against WSRC or the Government which may result from the failure or alleged failure of Supplier or of any of its Subcontractors to comply therewith.

#### **A.10 PUBLIC RELEASE OF INFORMATION**

Information, data, photographs, sketches, advertising, announcements, denial, or confirmation of same, or items of a similar nature, relating to this Order, which Supplier desires to release or publish, shall be submitted to WSRC for approval eight weeks prior to the desired release date. As part of the approval request, Supplier shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases by Subcontractors must have the prior approval of WSRC. Supplier shall include all provisions of this article including this sentence in all subcontracts or purchase orders under this Order. WSRC's approval shall not be unreasonably withheld.

#### **A.11 FEDERAL, STATE, AND LOCAL TAXES**

- A. (1) "After-imposed Federal tax" as used in this article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the Order date but whose exemption was later revoked or reduced during this Order period, on the transactions or property covered by this Order that the Supplier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Order date. It does not include social security tax or other employment taxes.
- (2) "After-relieved Federal tax" as used in this article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this Order, but which the Supplier is not required to pay or bear, or for which the Supplier obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the Order date.
- (3) "All applicable Federal, State, and local taxes and duties" as used in this article, means all taxes and duties, in effect on the Order date, that the taxing authority is imposing and collecting on the transactions or property covered by this Order.

- (4) "Order date" as used in this article means the date set for bid opening or, if this is a negotiated order or modification, the effective date of this Order or modification.
- B. Supplier shall not collect an increment for South Carolina sales or use tax from WSRC for the materials and/or services provided under this Order beyond such taxes paid by the Supplier to its suppliers.
- C. The Order price includes all applicable Federal, State, and local taxes and duties. (See paragraph B. above.)
- D. The Order price shall be increased by the amount of any after-imposed Federal tax, provided Supplier warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Order price, as a contingency, reserve or otherwise.
- E. The Order price shall be decreased by the amount of any after-relieved Federal tax.
- F. The Order price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that Supplier is required to pay or bear, or does not obtain a refund of, through Supplier's fault, negligence, or failure to follow instructions of WSRC.
- G. No adjustment shall be made in the Order price under this article unless the amount of the adjustment exceeds \$100.
- H. Supplier shall promptly notify WSRC of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Order price and shall take appropriate action as WSRC directs.

#### **A.12 TERMINATION FOR CONVENIENCE OF WSRC**

WSRC may, by written notice, terminate this Order, in whole or in part, when it is in WSRC's interest to do so. If this Order is so terminated, the rights, duties, and obligation of the parties, including compensation to Supplier, shall be in accordance with Part 49 of the FAR as supplemented or modified by Part 949 of the DEAR in effect on the date of this Order.

#### **A.13 DISPUTES**

- A. Subcontractor shall not be entitled to and neither WSRC nor the Government shall be liable to the Subcontractor or its lower-tier suppliers or subcontractors for damages in tort (including negligence), or contract, or otherwise, except as specifically provided in this order.

- B. The Parties shall attempt to settle any claim or controversy arising from this Order through consultation and negotiations in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator chosen by the Parties within thirty (30) days after written notice by one party demanding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, and the Parties will share the costs of the mediation equally. Any dispute which cannot be resolved between the Parties through negotiation or mediation shall be resolved by litigation in a court of competent jurisdiction located in the State of South Carolina. Determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government; if there is no applicable Federal Government contract law, the law of the State of South Carolina shall apply in the determination of such issues.
- C. During the pendency of a dispute, the Supplier shall proceed diligently with performance of all terms of this Order. The Supplier's consent to so proceed shall not restrict or otherwise affect the Supplier's right to contest any claim.

#### **A.14 COMPLIANCE**

- A. Except as otherwise directed by WSRC, Supplier shall procure, without additional expense to WSRC, all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory, and political subdivisions in which the Work is performed. This includes, but is not necessarily limited to identifying if such permits and licenses are required, compiling the information and data required for applications to obtain permits and licenses, filing of necessary applications for such permits and licenses, and providing any additional information or data required. Where the WSRC or the GOVERNMENT furnishes permits and licenses, the Supplier shall provide all reasonable assistance requested, including the providing of any necessary information or data.
- B. Supplier warrants that any and all Work performed and/or Supplies furnished shall comply with all requirements of the Occupational Safety and Health Act of 1970, as the same may be amended from time to time and including all regulations adopted pursuant to such Act, and shall comply with all requirements

of any applicable health or safety statute or regulation of any state or local government agency having jurisdiction in the location to which Supplies are to be shipped or Work is to be performed pursuant to this Order.

- C. Supplier warrants that each and every chemical substance delivered under this Order shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8(b) of the Toxic Substances Control Act (Public Law 94-469).

#### **A.15 RIGHTS TO PROPOSAL DATA**

Except for the technical data contained on those pages of Supplier's proposal which are specifically identified in the Order with specific reference to this article and asserted by Supplier as being proprietary data, it is agreed that, as a condition of the award of this Order and notwithstanding the provisions of any notice appearing on the proposal or elsewhere, WSRC and the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this Order is based.

#### **A.16 WSRC POLICY ON OPPORTUNITY**

All subcontractors, vendors and suppliers are notified that it is the policy of the WSRC to provide equal employment opportunity and to adhere to federal, state and local laws pertaining thereto. Appropriate action will be taken on the part of all WSRC subcontractors, vendors and suppliers to insure adherence to such laws.

#### **A.17 DEFAULT**

- A. (1) WSRC may, subject to paragraphs C and D below, by written notice of default to Supplier, terminate this Order in whole or in part if Supplier fails to:
- (i) Deliver the Supplies or to perform the Services within the time specified in this Order or any extension;
  - (ii) Make progress, so as to endanger performance of this Order (but see subparagraph A (2) below); or
  - (iii) Perform any of the other provisions of this Order (but see subparagraph A (2) below).
- (2) WSRC's right to terminate this Order under subdivisions (1)(ii) and (1)(iii) above, may be exercised if Supplier does not cure such failure within 10 days (or more if authorized in writing by WSRC) after receipt of the notice from WSRC specifying the failure.



- B. If WSRC terminates this Order in whole or in part, it may acquire, under the terms and in the manner WSRC considers appropriate, supplies or services similar to those terminated, and Supplier will be liable to WSRC for any excess costs for those supplies or services. However, Supplier shall continue the Work not terminated.
- C. Except for defaults of Subcontractors at any tier, Supplier shall not be liable for any excess costs if the failure to perform this Order arises from causes beyond the control and without the fault or negligence of Supplier. Examples of such causes include
  - (1) Acts of God or of the public enemy,
  - (2) Acts of the Government in either its sovereign or contractual capacity,
  - (3) Fires,
  - (4) Floods,
  - (5) Epidemics,
  - (6) Quarantine restrictions
  - (7) Strikes,
  - (8) Freight embargoes, and
  - (9) Unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of Supplier.
- D. If the failure to perform is caused by the default of a Subcontractor at any tier, and if the cause of the default is beyond the control of both Supplier and the Subcontractor and without the fault or negligence of either, Supplier shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Supplier to meet the required delivery schedule.
- E. If this Order is terminated for default, WSRC may require Supplier to transfer title to the Government and deliver to WSRC, as directed by WSRC, any (1) completed Supplies, and (2) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this article) that Supplier has specifically produced or acquired for the terminated portion of this Order. Upon direction of WSRC, Supplier shall also protect and preserve property in its possession in which WSRC or the Government has an interest.
- F. WSRC shall pay the Order price for completed Supplies delivered and accepted. Supplier and WSRC shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes article. WSRC may withhold from

these amounts any sum it determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.

- G. If, after termination, it is determined that Supplier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of WSRC.
- H. The rights and remedies of WSRC in this article are in addition to any other rights and remedies provided by law or under this Order.

#### **A.18 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

- A. Supplier agrees to submit a Material Safety Data Sheet (for all hazardous materials/chemicals to the WSRC Purchasing Representative/STR for approval before chemical is brought onto SRS. This obligation applies to all materials delivered under this Subcontract which will involve exposure to hazardous materials/chemicals or items containing these materials/chemicals.
- B. All chemical containers shall be clearly labeled per OSHA standards. Chemicals not in an original container shall also be properly labeled with the product name and hazard markings per the Material Safety Data Sheet on file. Immediate use containers such as painter's pail, etc., are exempt from labeling requirements.
- C. Neither the requirements of this article nor any act or failure to act by WSRC or the Government shall relieve Supplier of any responsibility or liability for the safety of WSRC, Government, Supplier, or subcontractor personnel or property.
- D. Supplier shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the acquisition of licenses and permits) in connection with hazardous materials/chemicals.
- E. The Government and WSRC's rights in data furnished under this Order with respect to hazardous materials/chemicals are as follows:
  - (1) To use, duplicate, and disclose any data to which this article is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials/chemicals; (ii) obtain medical treatment for those affected by the material/chemical; and (iii) have others use, duplicate, and disclose the data for WSRC and the Government for these purposes.

- (2) To use, duplicate, and disclose data furnished under this article, in accordance with subparagraph E (1) above, in precedence over any other article of this Order providing for rights in data.
- (3) That WSRC and the Government are not precluded from using similar or identical data acquired from other sources.
- (4) That the data shall not be duplicated, disclosed, or released outside of WSRC or the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this article applies: "This is furnished under United States Government Contract No. DE-AC09-96SR18500 and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of WSRC. This legend shall be marked on any reproduction of this data."
- (5) That Supplier shall not place the legend or any other restrictive legend on any data which
  - (i) Supplier or any Subcontractor previously delivered to WSRC or the Government without limitations or
  - (ii) Should otherwise be delivered without limitations.
- F. Supplier shall insert this article, including this paragraph F, with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this Order involving hazardous materials/chemicals.

#### **A.19 PATENTS AND COPYRIGHTS**

***NOTE: This article shall apply only if Article C.4 of these General Provisions is not applicable.***

- A. Supplier shall, at its own expense, defend any suit or proceeding brought against WSRC and/or its vendors, mediate and immediate, so far as based on any allegation that any goods, material, equipment, device, item, method, or article (hereinafter referred to as "Product") or any part thereof furnished hereunder constitutes an infringement of any claim of any patent or violation of any copyright.
- B. In case the product or any part thereof furnished hereunder is held, in any suit or proceeding so defended to constitute infringement and its use is enjoined, Supplier shall, at its option and its own expense, in a timely manner either (i) procure for WSRC and its vendors, mediate and immediate, the right to continue using product or part

thereof, or (ii) replace it with a substantially equivalent noninfringing product, or (iii) modify it so it becomes noninfringing but is substantially functionally equivalent.

#### **A.20 COMPLIANCE WITH EMPLOYEE CONCERNS**

- A. Subcontractors shall ensure subcontractor employees are aware of the DOE-SRS and WSRC Employee Concerns Programs (ECP) and how to use the program by performing the following:
  - (1) Ensure employees are provided with information on the DOE-SRS and WSRC ECPs during initial orientation and annual training.
  - (2) Ensure that posters identifying the DOE-SRS and WSRC ECP telephone "hotline" numbers are displayed in conspicuous locations throughout the worksite. WSRC will provide posters, as necessary.
  - (3) Inform employees and subcontractor employees of the availability of the DOE-SRS ECP in case of dissatisfaction or lack of confidence with other reporting systems.
  - (4) Ensure managers and supervisors are aware of the prohibition of any reprisal against employees who have or are believed to have raised or reported concerns.
- B. Subcontractors must immediately notify the STR of any employee concern involving:
  - (1) A condition which constitutes an imminent threat to the health and safety of site personnel or to the general public.
  - (2) Circumstances which would cause adverse public reaction or receive local media attention.
  - (3) Allegations of reprisal.
- C. Subcontractors shall investigate any employee concern referred by the STR and inform the STR of investigation results within 7 days of receipt of concern. Inform the STR in writing if an extension to this 7-day timeframe is required, along with status of investigation to date and actions pending to closure. The investigation shall be conducted to the satisfaction of the WSRC Purchasing Representative.

#### **A.22 CONFIDENTIALITY OF INFORMATION**

- A. To the extent that the work under this Order requires that the Supplier be given access to confidential or proprietary business, technical or financial information belonging to the

Government, WSRC or other companies, the Supplier shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by WSRC or the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

- (1) Information which, at the time of receipt by the Supplier, is in public domain;
  - (2) Information, which is published after receipt thereof by the Supplier or otherwise, becomes part of the public domain through no fault of the Supplier;
  - (3) Information, which the Supplier can demonstrate, was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the government or other companies;
  - (4) Information, which the Supplier can demonstrate, was received by it from a third party who did not require the Supplier to hold it in confidence.
- B. The Supplier shall obtain the written agreement, in a form satisfactory to WSRC, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Supplier's organization directly concerned with the performance of the contract.
- C. The Supplier agrees, if requested by the WSRC or the Government, to sign an agreement identical, in all material respects, to the provisions of this article, with each company supplying information to the Supplier under this Order, and to supply a copy of such agreement to WSRC. From time to time upon request of WSRC, the Supplier shall supply WSRC with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Supplier received such information.
- D. The Supplier agrees that upon request by DOE or WSRC, it will execute a DOE-approved agreement, with any party whose facilities or proprietary data it is given access to or is furnished, restricting the use and disclosure of the data or the information obtained from the facilities. Upon request by DOE or WSRC Supplier personnel shall also sign such an agreement.

## **A.23 WORKPLACE SUBSTANCE ABUSE PROGRAMS**

### **A. Fitness for Duty**

- (1) (i) The Supplier shall advise employees and the employees of lower tier subcontractors and agents that it is the policy of WSRC to prohibit the use, possession, sale and distribution of alcohol, drugs or other controlled substance within the limits of the Savannah River Site (SRS), and/or any off-Site facilities, and to prohibit the presence of individuals who have such substances in the body for non-medical reasons. Any Supplier employee who is found in violation of the policy may be removed or barred from the site.
- (ii) The Supplier agrees to advise its employees and the employees of lower-tier subcontractors of the above policy prior to assignment to the Site and to maintain documentation that such advice has been given.
- (2) WSRC will collect urine specimens when Subcontractor employees are processed for badging. WSRC will send these specimens to a consultant for testing and verification. The testing process may take up to five (5) days to obtain results. In the event of "positive" findings, the Subcontractor will be notified and shall bring the individual to the Badge Office for an "Exit Conference". The Subcontractor then agrees to promptly remove such individual from the Savannah River Site and return the badge to the WSRC Subcontractor Badge Office.
- (3) The Supplier agrees to secure the written consent of employees to release results of urine tests to the designated WSRC representative. WSRC agrees to use such results solely in connection with its decision as to whether to permit a Supplier employee, lower-tier subcontractor employee, or agent to access Savannah River Site property.
- (4) WSRC will also conduct for-cause and random drug and alcohol testing on all employees badged by WSRC. The Supplier agrees to comply with and secure the compliance of its employees and employees of lower-tier subcontractors with this testing. In the event of "positive" findings, the Supplier agrees to promptly remove such individual from the Savannah River Site and return his or her badge to the WSRC Subcontractor Badging Office.
- (5) A Breath Alcohol Test will be given during the initial badging process and the results will be available immediately. In the event of "positive" findings, the Supplier's or

Subcontractor's employee will not be badged, shall be issued a temporary pass, and will be escorted offsite by a Supplier's or Subcontractor's Representative.

**B. Suitability for Employment**

- (1) Supplier employees, including employees of lower-tier subcontractors, who are to be badged to permit Savannah River Site access, must successfully complete a Suitability for Employment process. As part of this process, the Supplier agrees to advise its employees and employees of lower-tier subcontractors that they will be required to complete certain forms, which authorize background investigations. These forms shall be submitted during the badging process.
- (2) Employees will be issued a photo badge and allowed site access on the first reporting day. In the event a Supplier's employee subsequently fails to successfully complete the background investigation, the Supplier agrees to promptly remove such individual from the site and to return the badge to the WSRC Subcontractor Badging Office.
- (3) Supplier agrees to advise its employees of the above requirement prior to assignment to the Savannah River Site and to maintain documentation that such advice has been given.

**A.24 BADGING REQUIREMENTS**

**A. Photo Badge**

- (1) To obtain a one-year Photo Badge, Subcontractor employees and any Lower-tier Subcontractor employees must be processed through WSRC's Subcontract Badging Procedure and are subject to investigation by Governmental authorities. All badges must be returned or accounted for prior to final payment. All employees must be at least 18 years old.
- (2) Subcontractor employees and any Lower-tier Subcontractor employees shall complete Subcontractor Employee Data Sheet and Fingerprint Cards.
- (3) Subcontractor will observe the following badging procedure for processing employees through employment and security orientation:
  - (i) A minimum of two working days prior to the start of the badging and orientation process, subcontractor shall transmit the following information to the STR (or the End User if an STR is not appointed for this order):

- Subcontract Number
- Employee name
- Employee address
- Employee Social Security Number
- Employee Date of Birth

- (ii) Subcontractor employees shall report to SRS Building 703-46A at SRS Road 1, approximately two miles east of SC Highway 125 in Jackson, SC. Employee shall be given a temporary badge for travel to SRS Central Shops Area for Substance Abuse Program (SAP) Testing. (See Article titled "Workplace Substance Abuse Programs.")

- (iii) Each employee must successfully pass General Employee Training (GET) prior to undergoing the Photo Badging procedure. See Article titled "General Employee Training and Annual Refresher Training for Subcontract Employees". GET is given on Monday of each week in the Jackson, SC municipal building, and should be scheduled well in advance of the desired date in order to assure placement.

- (iv) The orientation and badging process will take approximately four (4) hours.

- (4) The maximum duration that Subcontractor employees will be issued a site access badge is one (1) year. Subcontractor employees requiring a new badge will report to the Badge Office and repeat the badging process.
- (5) If Work under this Subcontract is to be performed in security areas, all personnel will be required to sign in and out at security gates and are subject to a search of their person and belongings at entrances to or exit from the area.

**B. Temporary Badge (typically for visitors and short term personnel).**

- (1) Temporary badges are valid for a maximum of 10 calendar days per person in a calendar year. To avoid unnecessary expiration, these badges should be returned to the badge office immediately upon completion of need.
- (2) Two working days prior to the need date, subcontractor shall transmit the following information to the STR/End User:
  - Subcontract Number
  - Employee name
  - Employee address

- Employee Social Security Number
  - Employee Date of Birth
- (3) The Assigned Competent Person (ACP) (Subcontractor or WSRC employee) shall perform Task Analysis of scope to be performed and identify any applicable contractual task specific checklist(s) from the subcontractors accepted Worker Protection Plan or WSRC's Focused Observation Database if a WPP is not required by the terms of this order.
  - (4) ACP shall provide advance copy of "Visitor/Vendor Safety Briefing" and any task specific safety checklist(s).
  - (5) Badge Office provides initial security briefing, issues registration card and obtains acknowledgement signature, issues "maroon" Visitors Badge for duration requested by STR/End User.
  - (6) ACP reviews any applicable checklist(s) and performs focused observations as directed by the STR/End User.
  - (7) Upon completion of scope, return badge to Badge Office upon exiting SRS.
- C. Identity Verification.
- (1) In order to receive a photo or temporary badge for entry to SRS, supplier/subcontractor employees, except delivery personnel (see subparagraph (2) below), will be required to present two specific forms of identification from the "List of Acceptable Documents" (Department of Homeland Security Form I-9, copy available on the WSRC Internet Home Page at [http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)). At least one of the documents selected from the list must be a valid State or Federal government-issued picture ID. .
  - (2) Vendor Delivery Personnel. Unbadged personnel seeking a temporary badge for material/equipment deliveries will be required to present one form of picture identification that will verify their identity, such as a valid state driver's license that includes a photograph. Delivery personnel shall enter the site at the Aiken Barricade located approximately one (1) mile south of SC Highway 278, and will be escorted at all times to the delivery location and back to the entrance barricade by Wackenhut Services, Inc assigned escorts, or by Assigned Competent Persons (WSRC or Subcontractor).

- D. If the Subcontractor or any lower-tier subcontractor should independently suspend or remove an employee from work at the Savannah River Site (SRS) for unsafe acts or behavior, the Subcontractor shall immediately notify the STR/End User, return the employee's badge to the STR/End User, and provide the STR/End User with written notification of the employee's name and reason(s) for such suspension or removal.

#### **A.25 TAX WITHHOLDING FOR NONRESIDENTS**

- A. Withholdings required by section 12-8-550 do not apply to payments on orders for tangible personal property when those payments are not accompanied by services to be performed within the state of South Carolina.
- B. Under Title 12 of the Code of Laws of South Carolina, section 12-8-550, two (2) percent of each and every payment made to Suppliers and Subcontractors who are nonresidents of the State of South Carolina and are conducting a business or performing personal services of a temporary nature carried on within South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where an order or a subcontract exceeds or could reasonably be expected to exceed ten thousand dollars (\$10,000.00) WSRC will withhold as required by law.
- C. Under Title 12 of the Code of Laws of South Carolina, section 12-8-540, seven (7) percent (five (5) percent for corporations) of each and every payment of rentals or royalties to subcontractors who are nonresidents of the State of South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where the payments amount to twelve hundred dollars (\$1,200.00) or more a year. WSRC will withhold as required by law.
- D. The above withholdings will not be made provided the Supplier presents the affidavit of registration with the South Carolina Department of Revenue or the South Carolina Secretary of State's Office, or proof of having posted the appropriate bond with the South Carolina Tax Commission.

#### **A.26 OZONE DEPLETING SUBSTANCE**

Without limiting any of the other Articles herein, Supplier warrants that all of the supplies furnished under this Order have been completely and accurately labeled pursuant to the requirements of 40 CFR Part

82, "Protection of Stratospheric Ozone", or that such supplies do not require such labeling.

#### **A.27 REPORTING OF ROYALTIES**

If any royalty payments are directly involved in this Order or are reflected in the Order price, Supplier agrees to report in writing to WSRC during the performance of this Order and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this Order together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of DOE or WSRC of any individual payments or royalties shall not preclude the Government or WSRC at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payment is made. The provision of this article shall be included in all subcontracts that are expected to exceed \$25,000

#### **A.28 SECURITY**

##### **A. Responsibility**

It is the Supplier's duty to safeguard all classified information, special nuclear material, and other DOE/WSRC property. The Supplier shall, in accordance with DOE/WSRC security and counterintelligence regulations and requirements, be responsible for safeguarding all classified, unclassified sensitive and proprietary information and protecting against sabotage, espionage, loss and theft of the classified, unclassified sensitive and proprietary matter in the Supplier's possession in connection with the performance of work under this Order. Except as otherwise expressly provided in this Order, the Supplier shall, upon completion or termination of this Order, transmit to WSRC any classified, unclassified sensitive, and proprietary matter in the possession of the Supplier or any person under the Supplier's control in connection with performance of this Order. If retention by the Supplier of any classified, unclassified sensitive, and proprietary matter in the Supplier's possession is required after the completion or termination of the Order and such retention is approved by the WSRC Purchasing Representative, the Supplier shall complete a certificate of possession to be furnished to WSRC specifying the classified, unclassified sensitive, and proprietary matter in the Supplier's possession are to be retained. The

certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the WSRC Purchasing Representative approves the retention, the security provisions of this Order shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of this Order.

##### **B. Regulations**

The Subcontractor agrees to comply with all security and counterintelligence regulations and requirements of DOE/WSRC in effect on the date of award of this order.

##### **C. Definition of Classified Information**

The term "Classified Information" means Restricted Data, Formerly Restricted Data, or National Security Information.

##### **D. Definition of Restricted Data**

The term "Restricted Data" means all data concerning:

- (1) design, manufacture, or utilization of atomic weapons;
- (2) the production of special nuclear material; or
- (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

##### **E. Definition of Formerly Restricted Data**

The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142d. of the Atomic Energy Act of 1954, as amended.

##### **F. Definition of National Security Information**

The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12958 or prior Executive Orders to require protection against unauthorized disclosure, and which is so designated.

##### **G. Definition of Special Nuclear Material (SNM)**

SNM means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

H. Security Clearance of Personnel

The Supplier shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12958, and DOE/WSRC regulations or requirements applicable to the particular level and category of classified information to which access is required.

I. Criminal Liability

It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Supplier or any person under the Supplier's control in connection with work under this Order, may subject the Supplier, its agents, employees, or Subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12958).

J. Subcontracts and Purchase Orders

Except as otherwise authorized in writing by the WSRC Purchasing Representative, the Supplier shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this Order.

**A.29 SUPPLIER'S LIABILITY FOR FINES AND PENALTIES**

- A. Supplier is liable to WSRC for fines and penalties assessed by any governmental entity against WSRC or DOE as a result of Supplier's failure to perform its work under the Order in compliance with the requirements of the Order.
- B. Supplier shall indemnify and hold harmless WSRC and DOE from and against any and all claims, demands, actions, causes of action, suits, damages, expenses, including attorney's fees, and liabilities whatsoever resulting from or arising in any manner on account of the assessment of said fines and penalties against WSRC or DOE.

**A.30 FOREIGN NATIONALS**

*As used in this Article, the term "Foreign National" is defined to be a person who was born outside the jurisdiction of the United States, is a citizen of a foreign government and has not been naturalized under U.S. law.*

- A. The Subcontractor shall obtain the approval of WSRC, in writing, prior to any visit to a DOE or WSRC facility by any Foreign National in connection with work being performed under this Order, in accordance with the requirements

of DOE Order 142.3, Unclassified Foreign Visits and Assignments Program. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontract service work, including delivery of materials, or for courtesy purposes. The term "visit" also includes officially-sponsored attendance at a DOE or WSRC event off-site from the DOE/WSRC facility, but does not include off-site events and activities open to the general public. Subcontractors should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the WSRC Purchasing Representative at least four (4) to six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited. Forms can be obtained from the WSRC Purchasing Representative.

- B. In addition, the Subcontractor shall obtain the approval of the WSRC Purchasing Representative, in writing, prior to the employment of, or participation by, any Foreign National in the performance of work under this Subcontract or any lower tier Subcontract at off-site locations. Such approvals will be processed in accordance with the requirements of DOE Order 142.3
- C. In the performance of off-site work, Foreign Nationals only incidentally involved with a WSRC Subcontract, and who have no knowledge that their activities are associated with WSRC Subcontract work, are exempt from the above.

**A.31 EXPORT CONTROL**

- A. U. S. Government property purchased or acquired under this order may or may not be authorized for export from the U.S. to a foreign country. If export is allowed, the Subcontractor is solely responsible for obtaining all required clearances or approvals. The Subcontractor also is required to pass on this information and any other DOE-provided export control guidance if the property is resold (including domestic retransfers) or otherwise disposed.
- B. The use, disposition, export and reexport of the property is subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 USC 2751 et seq.); the Export Administration Act of 1979 (50 USC Append 2401 et seq.); DOE Regulations (10 CFR Part 810); International Traffic in Arms Regulations (22 CFR 120 et seq.); Export Administration

Regulations (15 CFR 730et seq.); Foreign Assets Control Regulations (31 CFR 500 et seq.); and the Espionage Act (37 USC 791 et seq.) which among other things, prohibit:

- (1) The making of false statement and concealment of any material information regarding the use or disposition, export or reexport of the property; and
- (2) Any use of disposition, export or re-export of the property which is not authorized in accordance with the provisions of this Agreement.

### **A.32 PROLIFERATION SENSITIVE PROPERTY ACKNOWLEDGMENT**

In the event that proliferation sensitive property, as identified on the U. S. Munitions List (22 CFR 121) or the International Atomic Energy Agency Information Circular (INFCIRC) 254 Part 1 (the Trigger List), is inadvertently included in this sale, the Subcontractor agrees that the part of the sale involving the property is void, and, if such property has been received by the Subcontractor, that Subcontractor will return the property to DOE-Savannah River Operations. Once notified by WSRC of its intent to reclaim the aforesaid property, the Subcontractor agrees to take all reasonable measures to safeguard the property until its return to WSRC.

### **A.33 INSPECTION OF SUPPLIES AND SERVICES**

#### **A. Definitions**

- (1) "Services" as used in this article includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (2) "Supplies" as used in this article, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

B. Supplier shall provide and maintain an inspection system acceptable to WSRC covering Services and/or Supplies and shall tender to WSRC for acceptance only Supplies that have been inspected in accordance with the inspection system and have been found by Supplier to be in conformity with Order requirements. As part of the system, Supplier shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to WSRC and the Government during Order performance and for as long afterwards as this Order requires. WSRC and the Government may perform reviews and evaluations reasonably necessary to ascertain compliance with this paragraph. These

reviews and evaluations shall be conducted in a manner that will not unduly delay the Work. The right of review, whether exercised or not, does not relieve Supplier of its obligations under this Order.

- C. WSRC and the Government has the right to inspect and test all Supplies and Services called for by this Order, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. WSRC and the Government shall perform inspections and tests in a manner that will not unduly delay the Work. WSRC and the Government assume no contractual obligation to perform any inspection and test for the benefit of Supplier, unless specifically set forth elsewhere in this Order.
- D. If WSRC or the Government performs an inspection or test on the premises of Supplier or a Subcontractor; Supplier shall furnish, and shall require Subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in this Order, WSRC shall bear the expense of WSRC and Government inspections or tests made at other than the Supplier's or Subcontractor's premises; provided, that in case of rejection, WSRC and the Government shall not be liable for any reduction in the value of inspection or test samples.
- E. (1) When Supplies or Services are not ready at the time specified by Supplier for inspection or test, WSRC may charge to Supplier the additional cost to WSRC related to the inspection or test.  
(2) WSRC may also charge Supplier for any additional cost of inspection or test when prior rejection makes re-inspection or retest necessary.
- F. WSRC has the right either to reject or to require correction of nonconforming Supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Order requirements. WSRC may reject nonconforming Supplies with or without disposition instructions.
- G. Supplier shall remove Supplies rejected or required to be corrected. However, WSRC may require correction in place, promptly after notice, by and at the expense of Supplier. Supplier shall not tender for acceptance corrected or rejected Supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.



- H. If any of the Services do not conform with Order requirements, WSRC may require Supplier to perform the Services again in conformity with Order requirements, at no increase in Order amount. When the defects in Services cannot be corrected by reperformance, WSRC may
  - (1) Require Supplier to take necessary action to ensure that future performance conforms to Order requirements and
  - (2) Reduce the Order price to reflect the reduced value of the Services performed.
- I. If Supplier fails to remove, replace, or correct rejected Supplies promptly, that are required to be removed or to be replaced or corrected, or to reperform nonconforming Services promptly in conformance with Order requirements or to take the necessary action to ensure future performance of Services in conformity with Order requirements, WSRC may
  - (1) By Order or otherwise, remove, replace, or correct the Supplies and perform the Services and charge the cost to Supplier;
  - (2) Terminate this Order for default; or
  - (3) Require delivery and make an equitable price reduction.
- J. (1) If this Order provides for the performance of quality assurance at source, and if requested by WSRC, the Supplier shall furnish advance notification of the time
  - (i) When Supplier inspection or tests will be performed in accordance with the terms and conditions of this Order and
  - (ii) When the Supplies will be ready for WSRC inspection.
 (2) The WSRC request shall specify the period and method of the advance notification and the WSRC representative to whom it shall be furnished. Requests shall not require more than two workdays of advance notification if the WSRC representative is in residence in the Supplier's plant, nor more than seven workdays in other instances.
- K. WSRC shall accept or reject Supplies as promptly as practicable after delivery, unless otherwise provided in this Order. WSRC's failure to inspect and accept or reject the Supplies shall not relieve Supplier from responsibility, nor impose liability on WSRC, for nonconforming Supplies.
- L. Inspections and tests by WSRC and the Government do not relieve Supplier of responsibility for defects or other failures to meet Order requirements. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in this Order.
- M. If acceptance is not conclusive for any reason, WSRC, in addition to any other rights and remedies provided by law, or under other provisions of this Order, shall have the right to require the Supplier
  - (1) At no increase in Order price, to correct or replace the defective or nonconforming Supplies at the original point of delivery or at Supplier's plant, at WSRC's election and in accordance with a reasonable delivery schedule as may be agreed upon between Supplier and WSRC; provided, that WSRC may require a reduction in Order price if Supplier fails to meet such delivery schedule, or
  - (2) Within a reasonable time after receipt by Supplier of notice of defects or nonconformance, to repay such portion of this Order as is equitable under the circumstances if WSRC elects not to require correction or replacement. When Supplies are returned to Supplier, Supplier shall bear the transportation cost from the original point of delivery to Supplier's plant and return to the original point when that point is not the Supplier's plant. If Supplier fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of ten days (or such longer period as WSRC may authorize in writing) after receipt of notice from WSRC specifying such failure, WSRC shall have the right by contract or otherwise to replace or correct such Supplies and charge to Supplier the cost occasioned thereby.

#### **A.34 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

- A. Supplier shall have the sole responsibility for satisfying itself concerning the nature and location of the Work and the general and local conditions, including but not limited to the following:
  - (1) Transportation, access, disposal, handling and storage of materials,
  - (2) Availability and quality of labor, water, electric power and road conditions,
  - (3) Climatic conditions, tides and seasons,
  - (4) River hydrology and river stages,
  - (5) Physical conditions at the Jobsite and the project area as a whole,
  - (6) Topography and ground surface conditions, and
  - (7) Equipment and facilities needed preliminary to and during the performance of the Work.

- B. The failure of Supplier to acquaint itself with any applicable conditions will not relieve Supplier of the responsibility for properly estimating either the difficulties or the cost of successfully performing Supplier's obligations under this Subcontract.
- C. Where WSRC, or the GOVERNMENT has made investigations of subsurface conditions in areas where Work is to be performed under this Subcontract, such investigations are made by WSRC and the GOVERNMENT for the purpose of study and design. If the records of such investigations are included in the Subcontract Documents, the interpretation of such records shall be the sole responsibility of Supplier. Neither WSRC, nor the GOVERNMENT assumes any responsibility whatsoever in respect to the sufficiency or accuracy of such investigations, the records thereof, or of the interpretations set forth and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout such areas, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered.

#### **A.35 WSRC FURNISHED DRAWINGS**

Drawings and sketches furnished by the WSRC may not be to the scale indicated due to distortions and reductions in reproduction. Supplier shall rely on dimensions and coordinates shown on the drawings and sketches to determine other dimensions and quantities. If dimensions and/or coordinates are not sufficient to make this determination, Supplier shall contact WSRC's Subcontracts Specialist during the solicitation phase for clarification. No claims or adjustments to a resultant subcontract shall be considered for any failure to follow this process.

#### **A.36 LAWS AND REGULATIONS**

- A. Supplier and its employees and lower-tier Suppliers shall at all times comply with all applicable laws, ordinances, statutes, rules, or regulations, in effect at the time work under this subcontract is performed, and Supplier agrees to indemnify and save harmless WSRC and the Government from and against any and all claims or expenses caused or occasioned directly or indirectly by its failure to so comply.
- B. If during the term of this subcontract there are any changed or new laws, ordinances, or regulation not known or foreseeable at the time

of signing this subcontract which affect the cost or time of performance of the subcontract, Supplier shall immediately notify in writing and submit detailed documentation of such effect in terms of both time and cost of performing the subcontract. Upon concurrence by WSRC as to the effect of such changes, an equitable adjustment in the compensation and time of performance will be made.

- C. If any discrepancy or inconsistency should be discovered between the Subcontract and any law, ordinance, regulation, order, or decree, Supplier shall immediately report the same in writing to WSRC who will issue such further instructions as may be necessary.

#### **A.37 LIABILITY FOR GOVERNMENT PROPERTY**

Except for reasonable wear and tear incident to removal and delivery to WSRC, the supplier assumes the risk of and shall be responsible for any loss or destruction of, or damage to, items of property, title to which remains in the Government and that are to be delivered to WSRC by the supplier in performing the work.

#### **A.38 GENERAL EMPLOYEE TRAINING AND ANNUAL REFRESHER TRAINING FOR SUBCONTRACT EMPLOYEES**

*The following terms are applicable if performance of this Order will require the Supplier/Subcontractor's employee(s) to perform work on SRS premises for more than ten (10) working days.*

##### **A. General Employee Training (GET)**

- (1) The Subcontractor shall inform his employees and the employees of his lower tier subcontractors and agents that it is the policy of Washington Savannah River Company to adhere to the requirements contained in the DOE Order entitled "Personnel Selection, Qualification and Training Requirements," which requires any individual, employed either full or part-time at any DOE reactor or non-reactor facility to receive selected general training.
- (2) **Successful Completion Required**  
Said employees, referred to in the remainder of this document as "individual", must successfully complete the training known as "General Employee Training" (GET) as offered by the SRS. The GET sessions are given by a Savannah River Site authorized GET instructor. There are three categories of GET.

- (i) Category 1 consists of viewing a video that lasts for one hour. This category is limited to delivery personnel, visitors, and other temporary personnel that require badged access to the general site and property protection areas and are typically on site greater than 10 days, but not consecutively, in a calendar year.
- (ii) Category 2 consists of viewing a video and a written examination, and lasts for approximately two hours. This category would apply to visitors or other temporary personnel that require badged access to the general site and property protection areas and are on site greater than 10 days consecutively in a calendar year, and additional training is not required as determined by WSRC.
- (iii) Category 3 consists of eight hours of training and includes instructor lecture along with audio and visual aids and a written examination. This category applies to individuals who require badged access to the general site, property protection areas, or security controlled areas and additional training is required, as determined by WSRC.
- (3) Successful Completion Defined: Successful completion occurs when the individual
  - (i) Is scheduled for GET,
  - (ii) Attends the GET session,
  - (iii) Obtains a test score of 70% or greater on the written examination, if required, (100% is the highest obtainable score), and
  - (iv) Properly completes all documents (rosters, exam answer sheet, etc.).
- (4) Unsuccessful Completion Defined: If the individual fails to successfully complete GET, the individual is given a failure notice and is to notify the Subcontract Technical Representative (STR) for rescheduling for remedial training or for a re-test. The individual will be allowed several chances to successfully complete the GET. Continued failure to successfully complete GET will result in resolution by the STR.
- (5) Scheduling for GET  
The STR shall direct the individual to the appropriate training center to attend the GET session. GET training is scheduled subject to demand.
- (6) Records  
GET records will be maintained by WSRC.
- B. Annual Refresher Training

Refresher Training is required after an individual's initial successful completion of all categories of GET, regardless of the individual's present employer. Category 1 and Category 2 GET training must be repeated annually. For Category 3, successful completion of Consolidated Annual Training (CAT) is required. The subcontractor is responsible for scheduling its employees for this training. The STR may be contacted for assistance.

- C. Upon providing proof of successful completion of GET either at another DOE facility, or while employed by a firm other than the Supplier under this Order, the employee will not be required to repeat this training.

### **A.39 SECURITY EDUCATION REQUIREMENTS FOR SUBCONTRACTORS**

The following items are applicable if performance of this subcontract will require the Supplier/Subcontractor's employee(s) to receive a security badge.

- A. Subcontractor Security Education Coordinator
  - (1) If this Order will require a force of more than thirty (30) subcontract employees receive badges, then the Supplier/Subcontractor shall provide to the WSRC Security Education Office, the name of its representative appointed to administer its Security Education Program. This representative shall be referred to as the Subcontractor Security Education Coordinator (SSEC).
  - (2) If this Order will require that less than thirty (30) subcontract employees receive badges, then the WSRC Subcontract Technical Representative (STR) will perform the activities discussed in this Supplement.
- B. Company Roster  
The SSEC will be responsible for providing the STR with a roster of all subcontract personnel receiving a badge. At a minimum the data shall include name, social security number, and work telephone number, clearance level and place where work is generally performed. This list shall be kept current and updated every sixty-(60) days.
- C. Initial Briefing  
The SSEC will ensure that all subcontract personnel, regardless of clearance level, receive an Initial Security Briefing. This briefing is shown during General Employee Training. This briefing consists of videotape shown during GET, or at the time of badging for those individuals not required to attend GET.

D. Comprehensive Briefing

If subcontract personnel have a clearance at the inception of this Order, or receive a clearance at any time during the course of the Order, the SSEC/STR will ensure that those subcontract employees receive a Comprehensive Briefing from WSRC.

E. Annual Refresher Briefing

The SSEC/STR shall ensure that all subcontract employees receive, at least once in a twelve- (12) month period, an Annual Security Refresher briefing from WSRC. This briefing is provided during GET Refresher Training.

F. Foreign Travel Briefing

If a subcontract employee plans a trip to a sensitive country, whether on official business or for pleasure, the SSEC/STR is responsible for ensuring that the individual receives a Foreign Travel Briefing from WSRC before departing and a Debriefing upon return. The OPSEC Officer is responsible for these Briefings.

G. Badge Retrieval at Termination

The Supplier is responsible for ensuring that badges are returned or accounted for when a subcontract employee terminates employment or when an Order is completed. The employee must report to Employment Processing Center, for proper completion of out-processing and badge return. This effort should be coordinated with the WSRC STR.

H. Termination Briefing

When a subcontract employee terminates employment or is reassigned, the SSEC/STR will ensure that a Termination Briefing by WSRC is given and the appropriate forms are executed. Briefing materials and appropriate forms are provided by WSRC.

**A.40 BANKRUPTCY**

If the Supplier enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the WSRC Purchasing Representative within five (5) days of initiating the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the WSRC Subcontract/Order Numbers for which final payment has not been made.

**A.41 PRICE-ANDERSON AMENDMENTS ACT**

A. The Department of Energy has promulgated Procedural Rules (10 CFR 820), Nuclear Safety Management Rules (10 CFR 830), and Radiation Protection Rules (10 CFR 835) in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law

100-408, August 20, 1988. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules will provide a basis for the assessment of civil and criminal penalties under the PAAA.

B. This Order is subject to the requirements of the above rules if the performance of work involves conducting activities (including providing items and services), on or off the Savannah River Site, that affect, or may affect, the safety of DOE nuclear facilities.

C. Indemnification of WSRC

To the extent permitted by law, the Supplier assumes full responsibility and shall indemnify, save harmless, and defend WSRC and its principal subcontractors, their agents, officers, employees, and directors from any civil or criminal liability under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq., arising out of the activities of the Supplier, its lower-tier subcontractors, suppliers, agents, employees, officers, or directors. The Supplier's obligation to indemnify and hold harmless shall expressly include attorneys fees and other reasonable costs of defending any action or proceeding instituted under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq. A copy of the implementing regulations at 10 CFR Sections 820, et seq., will be made available to the Supplier upon request.

**A.42 SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE**

A. "Contract" means this Subcontract or Purchase Order (except in instances when it is not applicable or appropriate), and includes changes and modifications to this Subcontract.

B. "Contractor" means the party to whom this Subcontract or Purchase Order is awarded (except in instances when it is not applicable or appropriate).

C. "Government" means WSRC (except in instances when it is not applicable or appropriate).

D. "Contracting Officer" means the Procurement Representative of WSRC.

E. "Lower-Tier Subcontractor" means any party entering into an agreement with the Subcontractor or any lower-tier Subcontractor for the furnishing of supplies or services required for performance of this Subcontract.

*This Subcontract or Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available.*

**\*A.43 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**

DEAR 952.250-70

**\*A.44 EQUAL OPPORTUNITY (FEB 1999)**

FAR 52.222-26

**\*A.45 STOP WORK ORDER (AUG 1989)**

FAR 52.242-15

**\*A.46 CONVICT LABOR (AUG 1996)**

FAR 52.222-3

**\*A.47 NOTICE OF LABOR DISPUTES (FEB 1997)**

FAR 52.222-1

**\*A.48 INTEREST (JUN 1996)**

FAR 52.232-17, with the addition of a paragraph (d) to read as follows: “(d) No interest is payable to the Supplier for any claim or voucher the Supplier may submit for payment except as specifically imposed by a Court on any judgment obtained by the Supplier or as otherwise provided herein.”

**\*A.49 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)**

NOTE: This Article applies only with respect to work to be performed on-Site.

DEAR 952.203-70

**\*A.50 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)**

FAR 52.244-6

**\*A.51 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000)**

FAR 52.225-13

**\*A.52 DIFFERING SITE CONDITIONS (APR 1984)**

FAR 52.236-2

**\*A.53 SUSPENSION OF WORK (APR 1984)**

FAR 52.242-14

**SECTION B**

**SECTION B APPLIES IF THE VALUE OF THIS ORDER EXCEEDS \$2,500.**

*(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available. Reference Article A.41, “Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference”).*

**\*B.1 SERVICE CONTRACT ACT OF 1965 AS AMENDED (MAY 1989)**

FAR 52.222-41

**\*B.2 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)**

FAR 52.222-42

**\*B.3 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (FEB 2002)**

FAR 52.222-44

**SECTION C**

**SECTION C APPLIES IF THE VALUE OF THIS ORDER EXCEEDS \$10,000.**

*(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available. Reference Article A.41, “Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference”).*

**\*C.1 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

FAR 52.222-36

**\*C.2 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)**

FAR 52.222-35

**\*C.3 EMPLOYMENT REPORTS ON  
DISABLED VETERANS AND  
VETERANS OF THE VIETNAM ERA  
(JAN 1999)**

FAR 52.222-37

**\*C.4 PATENT INDEMNITY (APR 1984)**

FAR 52.227-3

(Note: If this Article is applicable, Article A.24 is deleted.)

**\*C.5 PROHIBITION OF SEGREGATED  
FACILITIES (FEB 1999)**

FAR 52.222-21

**SECTION D**

**SECTION D APPLIES IF THE VALUE OF THIS  
ORDER EXCEEDS \$25,000.**

*(This Purchase Order incorporates the Clause identified below by reference, with the same force and effect as if given in full text. Upon request, WSRC will make the full text available. Reference Article A.41, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*D.1 PROTECTION OF GOVERNMENT'S  
INTEREST IN SUBCONTRACTING (JUL  
1995)**

FAR 52.209-6

**SECTION E**

**SECTION E APPLIES IF THE VALUE OF THIS  
ORDER EXCEEDS \$100,000.**

**E.1 TERMINATION FOR CONVENIENCE  
OF WSRC**

*Article A.12 is hereby deleted.*

A. WSRC may terminate performance of the Work, in whole or, from time to time, in part if WSRC determines that a termination is in the WSRC's interest. WSRC shall terminate by delivering to Supplier a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in Supplier under this Order, it shall

revert to the Government regardless of any other article of this Order, except for property that Supplier disposed of by bona fide sale or removed from the site.

- B. After receipt of a Notice of Termination, and except as directed by WSRC, Supplier shall immediately proceed with the following obligations, regardless of delay in determining or adjusting any amounts due under this article:
- (1) Stop Work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this article) for materials, services, or facilities, except as necessary to complete the continued portion of this Order.
  - (3) Terminate all subcontracts to the extent they relate to the Work terminated.
  - (4) Assign to the Government, as directed by WSRC, all right, title, and interest of Supplier under the subcontracts terminated, in which case WSRC shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by WSRC, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this article.
  - (6) As directed by WSRC, transfer title to the Government and deliver to WSRC
    - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the Work terminated, and
    - (ii) The completed or partially completed plans, drawings, information, and other property that, if this Order had been completed, would be required to be furnished to WSRC.
  - (7) Complete performance of the Work not terminated.
  - (8) Take any action that may be necessary, or that WSRC may direct, for the protection and preservation of the property related to this Order that is in the possession of Supplier and in which WSRC has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by WSRC, any property of the types referred to in subparagraph (6) above; provided, however, that Supplier (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, WSRC. The proceeds of any

transfer or disposition will be applied to reduce any payments to be made by WSRC under this Order, credited to the price or cost of the Work, or paid in any other manner directed by WSRC.

- C. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, Supplier may submit to WSRC a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by WSRC. Supplier may request WSRC to remove those items or enter into an agreement for their storage. Within fifteen days, WSRC will accept title to those items and remove them or enter into a storage agreement. WSRC may verify the list upon removal of the items, or if stored, within forty-five days from submission of the list, and shall correct the list, as necessary, before final settlement.
- D. After termination, Supplier shall submit a final termination settlement proposal to WSRC in the form and with the certification prescribed by WSRC. Supplier shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by WSRC upon written request of Supplier within this one-year period. However, if WSRC determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If Supplier fails to submit the proposal within the time allowed, WSRC may determine, on the basis of information available, the amount, if any, due Supplier because of the termination and shall pay the amount determined.
- E. Subject to paragraph D above, Supplier and WSRC may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E or paragraph F below, exclusive of settlement costs, may not exceed the total Order price as reduced by
  - (1) The amount of payments previously made and
  - (2) The Order price of Work not terminated. This Order shall be amended and Supplier paid the agreed amount. Paragraph F below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- F. If Supplier and WSRC fail to agree on the whole amount to be paid because of the termination of Work, WSRC shall pay Supplier the amounts

determined by WSRC as follows, but without duplication of any amounts agreed on under paragraph E of this article:

- (1) For Work performed before the effective date of termination, the total (without duplication of any items) of:
  - (i) The cost of the Work;
  - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this Order, if not included in subdivision (i) above; and
  - (iii) A sum, as profit on subdivision (i) above, determined by WSRC under section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Order, to be fair and reasonable; however, if it appears that Supplier would have sustained a loss on the entire Order had it been completed, WSRC shall allow no profit under this subdivision (iii) and shall reduce the amount of the settlement to reflect the indicated rate of loss.
- (2) The reasonable costs of settlement of the work terminated, including:
  - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (iii) Preservation and protection of property under subparagraph B (8) of this article.
- G. Except for normal spoilage, and except to the extent that WSRC expressly assumed the risk of loss, WSRC shall exclude from the amounts payable to Supplier under paragraph F above, the fair value, as determined by WSRC, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to WSRC or to a buyer.
- H. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation as supplemented or modified by Part 931 of the Department of Energy Acquisition Regulation, in effect on the date of this Order, shall govern all costs claimed, agreed to, or determined under this article.
- I. If Supplier failed to submit the termination settlement proposal within the time provided in paragraph D or K and failed to request a time extension, the decision of WSRC is final and not subject to the Disputes article. If WSRC has

made a determination of the amount due under paragraph D, F, or K, WSRC shall pay Supplier

- (1) The amount determined by WSRC, if there is no right of appeal or if no timely appeal has been taken, or
  - (2) The amount finally determined on an appeal.
- J. In arriving at the amount due Supplier under this article, there shall be deducted-
- (1) All unliquidated advance or other payments to Supplier under the terminated portion of this Order;
  - (2) Any claim which WSRC or the Government has against Supplier under this Order; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Supplier or sold under the provisions of this article and not recovered by or credited to WSRC.
- K. If the termination is partial; Supplier may file a proposal with WSRC for an equitable adjustment of the price(s) of the continued portion of this Order. WSRC shall make any equitable adjustment agreed upon. Any proposal by Supplier for an equitable adjustment under this article shall be requested within ninety days from the effective date of termination unless extended in writing by WSRC.
- L. (1) WSRC may, under the terms and conditions it prescribes, make partial payments and payments against cost incurred by Supplier for the terminated portion of this Order, if WSRC believes the total of these payments will not exceed the amount to which Supplier will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, Supplier shall repay the excess to WSRC upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Supplier to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Supplier's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date determined by WSRC because of the circumstances.
- M. Unless otherwise provided in this Order or by statute, Supplier shall maintain all records and documents relating to the terminated portion of this Order for three years after final settlement. This includes all books and other evidence

bearing on Supplier's costs and expenses under this Order. Supplier shall make these records and documents available to the Government, at Supplier's office, at all reasonable times, without any direct charge. If approved by WSRC, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

## **E.2 ACCOUNTS, RECORDS AND INSPECTION**

### **A. Cost or Pricing Data**

If, pursuant to law, the Supplier has been required to submit cost or pricing data in connection with this Order or any modification to this Order, WSRC, the Government or representatives of the Government who are employees of the Government shall have the right to examine and audit all of the Supplier's books, records, documents, and other data regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, application software, database management software, utilities, etc.) including computations and projections related to proposing, negotiating, pricing, or performing the Order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projects used.

### **B. Reports**

If the Supplier is required to furnish cost, funding, or performance reports, WSRC, the government or representatives of the Government who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating

- (1) The effectiveness of the Supplier's policies and procedures to produce data compatible with the objectives of these reports and
- (2) The data reported.

### **C. Availability**

The Supplier shall make available at its office at all reasonable times the materials described in paragraphs A and B above, for examination, audit, or reproduction, until three (3) years after final payment under this Order or for any longer period required by statute or by other clauses of this contract. In addition -

- (1) If this Order is completely or partially terminated, the records relating to the work terminated shall be made available for three



- (3) years after any resulting final termination settlement; and
- (2) Records relating to appeals under the Disputes article or to litigation or the settlement of the Government and WSRC claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.
- D. Inspections  
DOE shall have the right to inspect the work and activities of the Supplier under this Order at such time and in such manner as it shall deem appropriate.
- E. Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, the Supplier may transfer computer data in machine-readable form from one reliable computer medium to another. The Supplier's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The Supplier's choice of form or type of materials described in paragraphs (A), (B), and (C) of this article affects neither the Supplier's obligations nor WSRC or the Government's rights under this clause.
- F. Comptroller General.
- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.
- (2) This paragraph may not be construed to require the subcontractor or a lower-tier subcontractor to create or maintain any record that the subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- G. The Supplier shall insert a clause containing all the terms of this article, including this paragraph (G), in all subcontracts over \$100,000 under this Order, altering the clause only as necessary to identify properly the contracting parties.

*(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available. Reference Article A.41, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*E.3 AUTHORIZATION AND CONSENT (JUL 1995)**

FAR 52.227-1

**\*E.4 NOTICE AND ASSISTANCE REGARDING PATENT COPYRIGHT INFRINGEMENT (AUG 2002)**

DEAR 970.5227-5

**\*E.5 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**

FAR 52.203-12

**\*E.6 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)**

FAR 52.219-8

**\*E.7 INTEGRITY OF UNIT PRICES (OCT 1997)**

FAR 52.215-14

**\*E.8 ANTI-KICKBACK PROCEDURES (JUL 1995)**

FAR 52.203-7

**\*E.9 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

FAR 52.203-6

**\*E.10 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION - GENERAL (JUL 1995)**

FAR 52.222-4

**\*E.11 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (JUN 1997)**

FAR 52.247-64

**\*E.12 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)**

FAR 52.223-14

**SECTION F**

**SECTION F APPLIES IF THE VALUE OF THIS ORDER EXCEEDS \$500,000.**

**F.1 DISPLACED EMPLOYEE HIRING PREFERENCE**

- A Definition. Eligible employee means a former or current employee of a contractor or

subcontractor (1) who has been employed at a Department of Energy Defense Nuclear Facility as defined in Section 3161 of the National Defense Authorization Act for FY 1993 (Pub. L. 102-484) and the Interim Planning Guidance for Contractor Work Force Restructuring (DEC 1998) or other applicable Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time (hereinafter "Guidance"), (2) whose employment at such a Defense Nuclear Facility has been involuntarily terminated (other than for cause) or who has been notified that they are facing termination, (3) who has also met the job attachment test as set forth in applicable Departmental Guidance, and (4) who is qualified for a particular position with the Contractor or, with retraining, can become qualified within the time and cost limits set forth in the Departmental Guidance.

- B. The Subcontractor will assess the skills needed for the work to be performed under this contract and will provide to DOE Job Opportunity Bulletin Board System (JOBBS) all information relevant to the qualifications for all of the positions for which the Subcontractor has vacancies.
- C. Consistent with the Department of Energy Guidance as supplemented by the appropriate site work force restructuring plan, the Subcontractor agrees that it will provide to the extent practicable a preference in hiring to an eligible employee as defined other than for managerial positions (defined as those above the first level of supervision) for work to be performed under this subcontract.
- D. The Subcontractor will develop training programs designed to improve the qualifications of employees to fill vacancies with the Subcontractor and will take such training into account in assessing the qualifications of eligible employees.
- E. The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

*(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available. Reference Article A.41, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*F.2 WORKFORCE RESTRUCTURING  
UNDER SECTION 3161 OF THE  
NATIONAL DEFENSE  
AUTHORIZATION ACT FOR FISCAL  
YEAR 1993 (DEC 2000)**

DEAR 970.5226.2

**\*F.3 SMALL BUSINESS SUBCONTRACTING  
PLAN (OCT 1999)**

FAR 52.219-9

**SECTION G**

**SECTION G ARTICLES APPLY ONLY IF  
SPECIFIED IN THE ORDER, REGARDLESS  
OF ORDER VALUE.**

**G.1 INTEGRATION OF ENVIRONMENT,  
SAFETY AND HEALTH INTO WORK  
PLANNING AND EXECUTION**

- A. For the purpose of this Article,
  - (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
  - (2) Employees include Subcontractor and lower-tier subcontractor employees.
- B. In performing work under this Subcontract, the Subcontractor and any lower-tier Subcontractor(s), shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral, but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:
  - (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those subcontractor and lower-tier subcontractor employees managing or supervising employees performing work.
  - (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
  - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

- (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
  - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by WSRC and the Subcontractor. These agreed-upon conditions and requirements of the Subcontract are binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work.
- C. The Subcontractor and any lower-tier Subcontractor(s), shall manage and perform work in accordance with Article G.2 or a documented Worker Protection Plan (WPP) that fulfills all conditions in paragraph B. of this Article to the degree specified in Article G.3 or G.4. as indicated applicable to this subcontract Documentation in the subcontract shall describe how the Subcontractor will:
- (1) Define the Work to be performed;
  - (2) Identify and analyze hazards associated with the work;
  - (3) Develop and implement hazard controls;
  - (4) Perform work within controls; and
  - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- D. The subcontract shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to Subcontract requirements and funding limits while maintaining the integrity of the WPP. The subcontract shall also describe how the Subcontractor will measure WPP effectiveness.
- E. The Subcontractor shall submit to the Purchasing Representative documentation of its WPP for review and acceptance. The Purchasing Representative will establish dates for submittal, discussions, and revisions to the WPP. The Purchasing Representative will provide guidance on preparation, content, review, and acceptance of the WPP.. On an annual basis, the Subcontractor shall review and update, for WSRC acceptance, its safety performance objectives, performance measures, and commitments consistent with, and in response to, Subcontract requirements, funding limits and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire WPP. Accordingly, the subcontract shall be integrated with the Subcontractor's business processes, as applicable to the Scope of Work contained in this subcontract, for work planning, budgeting, authorization, execution, and change control.
- F. The Subcontractor and any lower-tier Subcontractor(s), shall comply with, and assist WSRC in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the Article of this Subcontract on Laws, Regulations, and DOE Directives. The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this Subcontract.
- G. The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements including those specified in the subcontract. If the Subcontractor fails to provide resolution or, if at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Purchasing Representative may issue an order stopping work in whole or in part. Any stop work order issued by the Purchasing Representative under this Article (or issued by the Subcontractor to a lower-tier subcontractor shall be without prejudice to any other legal or contractual rights of WSRC. In the event that the Purchasing Representative issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Purchasing Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

- H. WSRC shall hold the Subcontractor responsible for compliance with the ES&H requirements applicable to this Subcontract, including performance of work by any lower-tier subcontractor(s).

**G.2 ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE - ALTERNATIVE I**

*(Compliance by the Subcontractor with the requirements of this Article G.2 shall satisfy any/all requirements of Article G.1, "Integration Of Environment, Safety and Health Into Work Planning And Execution", applicable to the scope of work contained in this Subcontract.)*

- A. The Subcontractor, and any lower-tier Subcontractor(s), shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety, and health of employees and members of the public. All work shall be performed to include lower-tier subcontracted work in compliance with all applicable WSRC/DOE environmental, safety, and health requirements, orders, and procedures including related reporting requirements. Such procedures provide authority to WSRC employees to call a "time out/stop work" when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property. The subcontractor shall ensure that its employees, including lower-tier subcontractor employees are aware of this authority, and also have similar "time out/stop work" authority when performing work under this subcontract. The WSRC Purchasing Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said WSRC/DOE regulations, requirements and procedures the WSRC Purchasing Representative may, without prejudice to any other legal or contractual rights of WSRC, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the Purchasing Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

- B. Prior to the start of work under this subcontract, the subcontractor shall provide to the WSRC Purchasing Representative a letter acknowledging a Corporate Safety and Health Policy and confirmation of compliance with WSRC procedures. In addition, for any tasks identified in the Statement of Work as outside the scope of WSRC procedures, the Subcontractor shall provide to the WSRC Purchasing Representative for WSRC review and acceptance any appropriate documentation, procedures or manuals containing task hazard reviews and safeguards to be implemented.
- C. Equipment Safety. The Subcontractor shall ensure that major equipment used in the performance of work under this subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, (copy available on the WSRC Internet Home Page) and provide one (1) copy to the WSRC Procurement Representative and one (1) copy to the Subcontract Technical Representative (STR), prior to placing any such equipment in service on the Savannah River Site. Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy duty equipment on the Savannah River Site, the Subcontractor shall complete the "Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist", copy available on the WSRC Home Page at ([http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)), and provide a copy to the STR.
- D. Assigned Competent Person. The Subcontractor shall designate in writing an Assigned Competent Person (ACP), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged subcontractor personnel seeking temporary badges in support of the subcontractor's work scope. The ACP shall be a responsible employee, cognizant of the subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of the "Visitor/Vendor Safety Briefing" (copy available on the SRS Internet Home Page), and applicable focused observation safety checklists to any lower-tier or supplier anticipating entry onto SRS. The ACP shall also meet entering personnel at the WSRC Badging

Office, Building 703-46A. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OHSA.

- E. Safety and Health Representative. The Subcontractor shall designate a safety and health professional or representative, as specified in the subcontract. The designation must include the person's qualifications and duties. A designated Safety Representative shall have a minimum of thirty (30) hours formal Safety and Health training in OSHA standards or pre-approved equivalent, having other safety related training certificates and/or job experience in General Industry/Construction safety with an understanding of 29 CFR 1910/1926 requirements.

### **G.3 ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE – ALTERNATIVE II**

*(Compliance by the Subcontractor with the requirements of this Article G.3 shall satisfy any/all requirements of Article G.1, "Integration Of Environment, Safety and Health Into Work Planning And Execution", applicable to the scope of work contained in this Subcontract.)*

- A. The Subcontractor and any lower-tier subcontractor(s) shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements. The subcontractor and any lower-tier subcontractor shall comply with site-specific ES&H requirements when specified in the subcontract. The WSRC Purchasing Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said regulations and requirements, the WSRC Purchasing Representative may, without prejudice to any other legal or contractual rights of WSRC, issue an order stopping work in whole or in part. An order

authorizing the resumption of work may be issued at the discretion of the WSRC Purchasing Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

#### **B. Corporate Worker Protection Plan (WPP)**

The Subcontractor shall possess and maintain a corporate Worker Protection Plan (WPP) which implements the OSHA requirements applicable to the normal course of the Subcontractor's business. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the WSRC Purchasing Representative a copy of the WPP and sample Task Specific Plans (TSP) (based on a minimum of three tasks in the scope of work) for review and acceptance by the appropriate WSRC organization(s). NOTE: Subcontractor is responsible for conducting hazard analysis and documenting additional TSPs. Work under this Subcontract shall not commence until the WPP and TSPs have been accepted by WSRC. The Subcontractor shall provide a copy of the accepted WPP and TSP to any lower-tier Subcontractor(s). The Subcontractor's employees and the employees of any lower-tier Subcontractor(s), shall comply with the WPP and TSPs in the performance of the work under this Subcontract. The WPP shall meet the following minimum requirements:

- (1) Shall include management policies that provide for clear goals, responsibilities, authority, and accountability for meeting loss control objectives;
- (2) Shall include the implementation of applicable local, state, federal, environment, safety and health requirements that are relevant to the scope of work, including ANSI C2-1981, "National Electrical Safety Code", and NFPA 70E, "Standard for Electrical Safety Requirements for Employee Workplaces";
- (3) Shall provide employee guidance on internal engineering controls, precautions, and requirements on personal protective equipment (PPE) to minimize, control and/or prevent employee exposure to include equipment/property loss;
- (4) Shall include Task Specific Plans that include hazard identification and control measures that provide for safe work practices and employee training (i.e., 1) Define Scope of Work, 2) Identify and Analyze Hazards, 3) Develop and Implement Controls, 4) Perform Work

- within Controls, 5) Provide Feedback, and Continuous Improvement.)
- (5) Shall include Focused Observation Checklists, as applicable. The Subcontractor shall (i) thoroughly assess the work scope, (ii) identify the associated hazards, and (iii) apply elements of corresponding Checklists within the Worker Protection Plan (WPP) or utilize applicable Checklists as attachments to the WPP. Subcontract scope performed by the subcontractor and its lower-tier Subcontractors will typically be covered by the WPP and appropriate Checklists. Such Checklists are available on the Savannah River Site Internet Home Page ([http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)) for review and down loading.
  - (6) Shall include a process that provides authority to subcontractor and lower-tier subcontractor employees to call for a "time out/stop work" when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property.
- C. Equipment Safety. The Subcontractor shall ensure that major equipment used in the performance of work under this subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, (copy available on the WSRC Internet Home Page) and provide one (1) copy to the WSRC Procurement Representative and one (1) copy to the Subcontract Technical Representative (STR), prior to placing any such equipment in service on the Savannah River Site. Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy duty equipment on the Savannah River Site, the Subcontractor shall complete the "Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist", copy available on the WSRC Home Page at ([http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)), and provide a copy to the STR.
- D. Assigned Competent Person. The Subcontractor shall designate in writing an Assigned Competent Person (ACP), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged subcontractor personnel seeking temporary badges in support of the subcontractor's work scope. The ACP shall be a responsible employee, cognizant of the subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of the "Visitor/Vendor Safety Briefing" (copy available on the SRS Internet Home Page), and applicable focused observation safety checklists to any lower-tier or supplier anticipating entry onto SRS. The ACP shall also meet entering personnel at the WSRC Badging Office, Building 703-46A. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA and the WPP.
- E. Safety and Health Representative. The Subcontractor shall designate a safety and health professional or representative, as specified in the subcontract. The designation must include the person's qualifications and duties and be documented in the Subcontractor's Worker Protection Plan. A designated Safety Representative shall have a minimum of thirty (30) hours formal Safety and Health training in OSHA standards or pre-approved equivalent, having other safety related training certificates and/or job experience in General Industry/Construction safety with an understanding of 29 CFR 1910/1926 requirements.
- F. Material Safety Data Sheets. The Subcontractor shall provide the STR copies of Material Safety Data Sheets for all chemicals brought to SRS prior to the initial use of such chemicals. In addition, the Subcontractor shall provide the STR with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow NFPA storage guidelines.
- G. Environmental Compliance The Subcontractor and any lower-tier subcontractor(s) shall comply with all applicable environmental protection laws, Executive Orders, ordinances, regulations, directives, and codes. Upon request, the Subcontractor shall submit an Environmental Compliance Plan

(ECP) outlining the methods proposed to address the environmental requirements specified in the scope of work. The ECP shall specify the person responsible for ensuring the requirements are met.

H. Site Reporting Requirements

The Subcontractor shall immediately notify the STR or WSRC Procurement Representative of any event/condition that may require reporting to DOE. Further, the Subcontractor shall cooperate with any WSRC or DOE critique, analysis, or investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 (DOE M 231.1-2) and can include (but are not limited to):

- (1) Operational emergencies,
- (2) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,
- (3) Fires/explosions.
- (4) Hazardous energy control failures,
- (5) Operations shutdown directed by management for safety response,
- (6) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.,
- (7) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,
- (8) Loss, damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),
- (9) Spread of radioactive contamination or loss of control of radioactive materials,
- (10) Personnel radioactive contaminations or exposures, and
- (11) Violations of procedures.

In addition, the Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition.

**G.4 ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE – ALTERNATIVE III**

*(Compliance by the Subcontractor with the requirements of this Article G.4 shall satisfy any/all requirements of Article G.1, "Integration Of Environment, Safety and Health Into Work Planning And Execution", applicable to the scope of work contained in this Subcontract.)*

- A. The Subcontractor and any lower-tier subcontractor(s) shall take all reasonable precautions in the performance of the work under

this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements. The subcontractor and any lower-tier subcontractor shall comply with site-specific ES&H requirements when specified in the subcontract. The WSRC Purchasing Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said regulations and requirements, the WSRC Purchasing Representative may, without prejudice to any other legal or contractual rights of WSRC, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the WSRC Purchasing Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

B. Corporate Worker Protection Plan (WPP)

The Subcontractor shall possess and maintain a corporate Worker Protection Plan (WPP) which implements the OSHA requirements applicable to the normal course of the Subcontractor's business. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the WSRC Purchasing Representative a copy of the WPP for review and acceptance by the appropriate WSRC organizations. The Subcontractor's employees and the employees of any lower-tier subcontractor(s), shall comply with the WPP in the performance of the work under this Subcontract. Work under the Subcontract shall not commence until the WPP has been received and accepted by WSRC. The Subcontractor shall provide a copy of the WPP to any lower-tier subcontractor(s). The WPP shall meet the following minimum requirements:

- (1) Shall include management policies that provide for clear goals, responsibilities, authority, and accountability for meeting loss control objectives;
- (2) Shall include the implementation of applicable local, state, federal, environment, safety and health requirements that are relevant to the scope of work, including ANSI C2-1981, "National Electrical Safety Code", and NFPA 70E, "Standard for Electrical Safety Requirements for

- Employee Workplaces”;
- (3) Shall provide employee guidance on task hazards, engineering controls, precautions, and requirements on personal protective equipment (PPE) to minimize, control and/or prevent employee exposure to include equipment/property loss;
  - (4) Shall include Focused Observation Checklists, as applicable. The Subcontractor shall (i) thoroughly assess the work scope, (ii) identify the associated hazards, and (iii) apply elements of corresponding Checklists within the Worker Protection Plan (WPP) or utilize applicable Checklists as attachments to the WPP. Subcontract scope performed by the subcontractor and its lower-tier Subcontractors will typically be covered by the WPP and appropriate Checklists. Such Checklists are available on the Savannah River Site Internet Home Page ([http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)) for review and down loading.
  - (5) Shall include a process that provides authority to subcontractor and lower-tier subcontractor employees to call for a “time out/ stop work” when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property.
- C. Equipment Safety. The Subcontractor shall ensure that major equipment used in the performance of work under this subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, (copy available on the WSRC Internet Home Page) and provide one (1) copy to the WSRC Procurement Representative and one (1) copy to the Subcontract Technical Representative (STR), prior to placing any such equipment in service on the Savannah River Site. Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy duty equipment on the Savannah River Site, the Subcontractor shall complete the “Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist”, copy available on the WSRC Home Page at ([http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)), and provide a copy to the STR.
- D. Assigned Competent Person. The Subcontractor shall designate in writing an Assigned Competent Person (ACP), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged subcontractor personnel seeking temporary badges in support of the subcontractor’s work scope. The ACP shall be a responsible employee, cognizant of the subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of the “Visitor/Vendor Safety Briefing” (copy available on the SRS Internet Home Page), and applicable focused observation safety checklists to any lower-tier or supplier anticipating entry onto SRS. The ACP shall also meet entering personnel at the WSRC Badging Office, Building 703-46A. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA and the WPP.
- E. Safety and Health Representative. The Subcontractor shall designate a safety and health professional or representative, as specified in the subcontract. The designation must include the person’s qualifications and duties and be documented in the Subcontractor’s Worker Protection Plan. A designated Safety Representative shall have a minimum of thirty (30) hours formal Safety and Health training in OSHA standards or pre-approved equivalent, having other safety related training certificates and/or job experience in General Industry/Construction safety with an understanding of 29 CFR 1910/1926 requirements.
- F. Material Safety Data Sheets. The Subcontractor shall provide the STR copies of Material Safety Data Sheets for all chemicals brought to SRS prior to the initial use of such chemicals. In addition, the Subcontractor shall provide the STR with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow NFPA storage guidelines.
- G. Environmental Compliance  
The Subcontractor and any lower-tier



subcontractor(s) shall comply with all applicable environmental protection laws, Executive Orders, ordinances, regulations, directives, and codes. Upon request, the Subcontractor shall submit an Environmental Compliance Plan (ECP) outlining the methods proposed to address the environmental requirements specified in the scope of work. The ECP shall specify the person responsible for ensuring the requirements are met.

**H. Site Reporting Requirements**

The Subcontractor shall immediately notify the STR or WSRC Procurement Representative of any event/condition that may require reporting to DOE. Further, the Subcontractor shall cooperate with any WSRC or DOE critique, analysis, or investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 (DOE M 231.1-2) and can include (but are not limited to):

- (1) Operational emergencies,
- (2) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,
- (3) Fires/explosions.
- (4) Hazardous energy control failures,
- (5) Operations shutdown directed by management for safety response,
- (6) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.,
- (7) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,
- (8) Loss, damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),
- (9) Spread of radioactive contamination or loss of control of radioactive materials,
- (10) Personnel radioactive contaminations or exposures, and
- (11) Violations of procedures.

In addition, the Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition.

**G.5 PAYMENT BY WSRC TO SUBCONTRACTOR**

- A. WSRC shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by WSRC, on estimates approved by WSRC. Except as provided in paragraph B below, in making progress payments, WSRC

shall retain 10 percent of the estimated payment until final completion and acceptance of the subcontract work. However, if WSRC finds that satisfactory progress was achieved during any period for which a progress payment is to be made, WSRC may authorize such payment in full, without retaining a percentage. Also, on completion and acceptance of each unit or division for which the price is stated separately, WSRC may authorize full payment for that unit or division without retaining a percentage.

- B. When the work is substantially completed, WSRC shall retain an amount considered adequate for the protection of WSRC and the Government and, at WSRC's discretion, may release all or a portion of any excess amount.
- C. In further consideration of performance, the Subcontractor shall receive title to all property to be dismantled or demolished that is not specifically designated as being retained by WSRC. Except as provided in paragraph D below the title shall vest in the Subcontractor immediately upon WSRC's issuing the notice of award, or if a performance bond is to be furnished after award, upon the WSRC's issuance of a notice to proceed with the work. WSRC shall not be responsible for the condition of or any loss or damage to, the property.
- D. Upon written notice to the Subcontractor while the aforesaid property remains in the possession of the Subcontractor, WSRC may reclaim title to any of the property if WSRC determines:
- (1) that the property does contain, or may contain, classified U.S. Government data (in any form), and/or technology sensitive to the national interest, or
  - (2) that the property is "Proliferation Sensitive Property", as defined in Article A.32 of these General Provisions.

WSRC and the Government are not liable to the Subcontractor for any costs associated with the inadvertent inclusion of such property in the sale. If payment has been made for any such property, the payment shall be refunded to the Subcontractor. Any reshipment costs involved will be the responsibility of WSRC. Once notified by WSRC of its intent to reclaim the aforesaid property, the Subcontractor agrees to take all reasonable measures to safeguard the aforesaid property until reclaimed by WSRC.

- E. Upon completion and acceptance of all work and receipt of a properly executed invoice, WSRC shall make final payment of the amount due the Subcontractor under this subcontract. If requested, the Subcontractor shall release all claims against WSRC arising under this

subcontract, other than any claims the Subcontractor specifically excepts, in stated amounts, from operation of the release.

- F. Overpayments. If Subcontractor becomes aware of a duplicate invoice payment or that WSRC has otherwise overpaid on an invoice payment, the Subcontractor shall immediately notify WSRC and request instructions for disposition of the overpayment

#### **G.6 PAYMENT BY SUBCONTRACTOR TO WSRD**

- A. The Subcontractor shall receive title to all property to be dismantled, demolished, or removed under this subcontract and not specifically designated in the Schedule as being retained by WSRC. Except as provided in paragraph C below, the title shall vest in the Subcontractor immediately upon WSRC's issuing the notice of award, or if a performance bond is to be furnished, upon WSRC's issuing a notice to proceed with the work. WSRC shall not be responsible for the condition of or any loss or damage to, the property.
- B. The Subcontractor shall promptly remove from the site all property acquired by the Subcontractor. WSRC shall not permit storage of property on the site beyond the completion date.
- C. Upon written notice to the Subcontractor while the aforesaid property remains in the possession of the Subcontractor, WSRC may reclaim title to any of the property if WSRC determines:
- (1) that the property does contain, or may contain, classified U.S. Government data (in any form), and/or technology sensitive to the national interest, or
  - (2) that the property is "Proliferation Sensitive Property", as defined in Article A.32 of these General Provisions.
- WSRC and the Government are not liable to the Subcontractor for any costs associated with the inadvertent inclusion of such property in the sale. If payment has been made for any such property, the payment shall be refunded to the Subcontractor. Any reshipment costs involved will be the responsibility of WSRC. Once notified by WSRC of its intent to reclaim the aforesaid property, the Subcontractor agrees to take all reasonable measures to safeguard the aforesaid property until reclaimed by WSRC.
- D. The Subcontractor shall perform the work within the time called for under this subcontract, and before proceeding with the work, shall make full payment to WSRC, as provided for in the Schedule. Checks shall be made payable to the office designated in the subcontract.

#### **G.7 INCREMENTAL PAYMENT BY SUBCONTRACTOR TO WSRC**

- A. The Subcontractor shall make payment to WSRC in the amount and frequency specified in the subcontract. Checks shall be made payable to the office designated in the subcontract.
- B. Except as provided in paragraph C below, and upon WSRC's receipt of each increment of payment, the Subcontractor shall receive title to such property as WSRC determines to be fair and reasonable for that increment of payment. Upon receipt of the Subcontractor's final payment, all title that has not passed to the Subcontractor shall vest in the Subcontractor, unless specifically designated in the Schedule as being retained by WSRC. WSRC shall not be responsible for the condition of or any loss or damage to, the property.
- C. Upon written notice to the Subcontractor while the aforesaid property remains in the possession of the Subcontractor, WSRC may reclaim title to any of the property if WSRC determines:
- (1) that the property does contain, or may contain, classified U.S. Government data (in any form), and/or technology sensitive to the national interest, or
  - (2) that the property is "Proliferation Sensitive Property", as defined in Article A.32 of these General Provisions.
- WSRC and the Government are not liable to the Subcontractor for any costs associated with the inadvertent inclusion of such property in the sale. If payment has been made for any such property, the payment shall be refunded to the Subcontractor. Any reshipment costs involved will be the responsibility of WSRC. Once notified by WSRC of its intent to reclaim the aforesaid property, the Subcontractor agrees to take all reasonable measures to safeguard the aforesaid property until reclaimed by WSRC.
- (D). The Subcontractor shall promptly remove from the site all property acquired by the Subcontractor. WSRC will not permit storage of property on the site beyond the completion date.

#### **G.8 PAYMENT BY ELECTRONIC FUNDS TRANSFER**

- A. Methods of Payment by WSRC.
- (1) All payments by WSRC under this Order shall be made by Electronic Funds Transfer (EFT) except as provided in paragraph A.2 of this Article. As used in this Article, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

- (2) In the event WSRC is unable to release one or more payments by EFT, Supplier agrees to either:
  - (i) Accept payment by check or some other mutually agreeable method of payment; or
  - (ii) Request WSRC to extend payment due dates until such time as WSRC makes payment by EFT.
- B. Mandatory Submission of Supplier's EFT Information.  
Supplier is required to provide WSRC with the information required for making payment by EFT. Supplier shall provide this information directly to the office designated in this Order, on forms provided by WSRC, no later than 15 days after award. If not otherwise specified in this Order, the payment office is the designated office for receipt of Supplier's EFT information. In the event that the EFT information changes, Supplier shall be responsible for providing the updated information to the designated office.
- C. Mechanisms for EFT Payment.  
WSRC may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System.
- D. Suspension of Payment.
  - (1) WSRC is not required to make any payment under this Order until after receipt, by the designated office, of the correct EFT payment information from Supplier. Until receipt of the correct EFT information, any invoice or subcontract financing request shall be deemed not to be a proper invoice for the purpose of payment under this Order.
  - (2) If the EFT information changes after submission of correct EFT information, WSRC shall begin using the changed EFT information no later than 30 days after its receipt by the designated office. However, Supplier may request that no further payments be made until the payment office implements the updated EFT information.
- E. Payment Information.  
On the day payment on Supplier's invoice is due, WSRC will issue instructions to its bank to transfer payment to Supplier, and will also send a FAX to Supplier explaining the details to support the payment.
- F. Liability for Uncompleted or Erroneous Transfers.
  - (1) If an uncompleted or erroneous transfer occurs because WSRC used the Supplier's

EFT information incorrectly, WSRC remains responsible for --

- (i) Making a correct payment; and
  - (ii) Recovering any erroneously directed funds.
- (2) If an uncompleted or erroneous transfer occurs because Supplier's EFT information was incorrect, or was revised within 30 days of WSRC release of the EFT payment transaction instructions to the bank, and --
    - (i) If the funds are no longer under the control of the payment office, WSRC is deemed to have made payment and the Supplier is responsible for recovery of any erroneously directed funds; or
    - (ii) If the funds remain under the control of the payment office, WSRC shall not make payment and the provisions of paragraph D shall apply.

#### **G.9 LIMITATION OF FUNDS**

- A. Of the total price of this Order, the sum of \$\_\_\_\_\_ is presently available for payment and allotted to this Order. It is anticipated that additional funds will be allocated to the Order in accordance with the following schedule until the total price of the Order is funded:
- B. The Supplier agrees to perform or have performed work on this Order up to the point at which, if this Order is terminated pursuant to the Termination For Convenience of WSRC article of this Order, the total amount payable by WSRC (including amounts payable for subcontracts and settlement costs) pursuant to the Termination For Convenience of WSRC article would, in the exercise of reasonable judgment by the Supplier, approximate the total amount at the time allotted to the Order. The Supplier is not obligated to continue performance of the work beyond that point. WSRC is not obligated in any event to pay or reimburse the Supplier more than the amount from time to time allotted to the Order, anything to the contrary in the Termination For Convenience of WSRC article notwithstanding.
- C.
  - (1) It is contemplated that funds presently allotted to this Order will cover the work to be performed until\_\_\_\_\_.
  - (2) If funds allotted are considered by the Supplier to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Supplier shall notify WSRC in writing when within the next 60 days the work will reach a point at which, if the Order is terminated pursuant to the Termination For Convenience of WSRC

article of the Order, the total amount payable by WSRC (including amounts payable for subcontracts and settlement costs) pursuant to the Termination For Convenience of WSRC article will approximate 75 percent of the total amount then allotted to the Order.

- (3) (i) The notice shall state the estimated date when the point referred to in subparagraph C 2 of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it.
- (ii) The Supplier shall, sixty days in advance of the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it, advise WSRC in writing as to the estimated amount of additional funds required for the timely performance of the Order for a further period as may be specified in the Order or otherwise agreed to by the parties.
- (4) If, after the notification referred to in subdivision C 3 (ii) of this clause, additional funds are not allotted by the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it, WSRC shall, upon the Supplier's written request, terminate this Order on that date or on the date set forth in the request, whichever is later, pursuant to the Termination For Convenience of WSRC article.
- D. When additional funds are allotted from time to time for continued performance of the work under this Order, the parties shall agree on the applicable period of order performance to be covered by these funds. The provisions of paragraphs B and C of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the Order shall be modified accordingly.
- E. If, solely by reason of WSRC's failure to allot additional funds in amounts sufficient for the timely performance of this Order, the Supplier incurs additional costs or is delayed in the performance of the work under this Order, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the work to be performed.

- F. WSRC may at any time before termination, and, with the consent of the Supplier, after notice of termination, allot additional funds for this Order.
- G. The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of WSRC under the default article of this Order. This clause shall become inoperative upon the allotment of funds for the total price of the work under this Order except for rights and obligations then existing under this clause.
- H. Nothing in this clause shall affect the right of WSRC to terminate this Order pursuant to the Termination for Convenience of WSRC article of the Order.

#### **G.10 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)**

In the performance of this order, the Supplier is responsible for complying with the following requirements and for flowing down all requirements to lower-tier suppliers.

- A. The Supplier ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE M 471.1-1, Chapter II). Supplier may provide access to material or data containing Unclassified Controlled Nuclear Information (UCNI) utilized in the performance of this Order only to employees who are citizens of the United States.
- B. The Supplier ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE M 471.1-1, Chapter II. Any material or data containing UCNI which is stored on computer systems must be protected, and the protective measures and/or policies must be specified in a Computer Protection Plan approved by the WSRC Computer Security organization. Adherence to the Plan is required during the performance of this Order.
- C. Material or data containing UCNI shall be disposed of in a manner as described in DOE M 471.1-1, Chapter II. At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than 1/4-inch wide strips. Documents containing UCNI may also be disposed of in the same manner that is authorized for Supplier disposition of other classified material or data. If the above disposal methods are not available to the Supplier, the Supplier may return the UCNI matter to the STR for disposition, with the prior approval of the STR.
- D. The supplier shall report to the WSRC Security Office or the WSRC Purchasing Representative

any incidents involving the unauthorized disclosure of UCNI.

- E. If performance of work under this order results in the generation of unclassified documents that contain UCNI, the Supplier shall have a sufficient number of trained UCNI review personnel to ensure the prompt and proper review of generated material or data to provide for the identification, marking, and proper handling of material or data determined to contain UCNI. The suppliers Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part C.
- F. If the supplier has a formally designated Classification Officer, the Classification Officer-
  - (1) Serves as a Reviewing Official for information under his/her cognizance;
  - (2) Trains and designates other Reviewing Officials in his/her organization, subordinate organizations, and lower-tier suppliers and maintains a current list of all Reviewing Officials; and
  - (3) May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.
- G. If the supplier has no formally designated Classification Officer, the supplier submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part B.

#### **G.11 RIGHT OF FIRST REFUSAL OF EMPLOYMENT**

The scope of work described herein as currently being performed by Buyer (WSRC/BSRI) employees and award of an order may displace these workers. Consistent with section 3161 of the National Defense Authorization Act (PL 102-484), if the Seller needs to hire additional employees beyond those already part of its existing work force as of the date of this solicitation in order to satisfy the performance requirements set forth by the scope of work in this solicitation, the Seller must first consider the employment of qualified displaced DOE contractor employees who meet the 3161 Job Attachment Test prior to using other avenues to fill that employment need. At the time of award of the Order, the Buyer shall make available to the Seller a list of displaced employees with sufficient information to allow for contact. This requirement shall be included in the resultant Order and be in effect from the date of award of the Order.

#### **G.12 CHANGES, EXTRAS AND SUBSTITUTIONS - (SUPPLEMENT)**

*NOTE: Inclusion of this Article supplements Article A.4, Changes.*

- A. In the event of an emergency which WSRC determines endangers life or property, WSRC may use oral orders to Subcontractor for any work required by reason of such emergency. Subcontractor shall commence and complete such emergency work as directed by WSRC. Such orders will be confirmed by Change Notice.
- B. Pricing of Adjustments

When costs are a factor in any determination of an Order adjustment pursuant to the General Provision titled "Changes", or any other provision of this Order, such costs, upward or downward, shall be submitted by Subcontractor in the form of a lump sum proposal. The proposal shall include an itemized breakdown of all increases or decreases in at least the following detail:

  - (1) Direct Labor.
    - (i) Charges for labor furnished and used by Subcontractor shall be allowable for all manual classifications up to and including foremen. Charges shall not be included for superintendents, assistant superintendents, general foreman, surveyors, office personnel, timekeepers, an maintenance mechanics; these cost are recovered in the overhead and profit rates established by this Article. Labor rates used to calculate the costs shall be those rates in effect during accomplishment of the changes.
    - (ii) Direct labor costs shall include, in addition to direct payroll costs, payroll taxes, insurance, vacation allowance, subsistence, travel time, overtime premium and any other payroll additives required to be paid by Subcontractor by law or labor agreement(s), e.g. Project Agreement, collective bargaining agreement(s), etc. Copies of certified pertinent payrolls shall be submitted to WSRC.
  - (2) Equipment.
    - (i) Charges shall be allowable for the rental and operation of all Subcontractor's equipment furnished and used by Subcontractor, except for equipment or tools with a new cost at point of origin of Five Hundred Dollars or less each,

which are deemed to be covered in the overhead and profit rates established by this Article.

- (ii) For Subcontractor -owned equipment, reasonable equipment charges shall be allowed in accordance with the following:
  - (a) Rental rates as agreed upon in the Order; or
  - (b) Rental rates not greater than seventy percent (70%) of Data Quest Blue Book daily rental rates applicable for the period of performance of the change; and
  - (c) Appropriately discounted to standby rates for idle time reasonably required.
- (iii) When the operated use of equipment is infrequent and, as determined by WSRC, such equipment need not remain at the work site continuously, charges shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at WSRC's direction shall be charged at the standby rate.
- (iv) For Rental Equipment not owned by Subcontractor, charges will be computed on the basis of actual invoice cost.
- (v) For the cost of both rented and owned to be allowable, Subcontractor must justify and WSRC agree that the individual pieces of equipment are needed, are appropriate for the work, and that the mobilization costs are allocable to the change.
- (3) Materials  
Approved incurred costs for material incorporated into the changed Work or required for temporary facilities made necessary by the change shall be allowable at net cost delivered to the Jobsite.
- (4) Overhead, Profit and All Other Costs
  - (i) Overhead, profit and markup percentages included in the proposal, shall include, but not be limited to, insurance, use of small tools, incidental job burdens, and general home and field office expense. No percentages for overhead, profit or lower-tier markup will be allowed on employment taxes under FICA and FUTA.
  - (ii) The percentages for overhead and profit will be negotiated and may vary according to the nature, extent and

complexity of the Work involved. The maximum percentage for the overhead, profit and markup shall not exceed those shown below.

- (iii) For work subcontracted to a lower-tier by Subcontractor, the proposal submitted to WSRC shall only include one overhead percentage and one profit percentage in addition to Subcontractor's markup. No more than these three percentages will be allowed regardless of the number of tiers of Subcontractors. The lower-tier's percentage of overhead and profit shall not exceed those shown below.

<u>Subcontracted Work</u>	<u>Overhead</u>	<u>Profit</u>	<u>Markup</u>
\$1 to \$19,999	0%	0%	8.0%
\$20,000 to \$49,999	0%	0%	5.5%
\$50,000 and above	0%	0%	2.0%
<u>Direct Hire Work:</u>	<u>Overhead</u>	<u>Profit</u>	<u>Markup</u>
\$1 to \$19,999	10.0%	10.0%	0%
\$20,000 to \$49,999	7.5%	7.5%	0%
\$50,000 and above	6.75%	6.75%	0%

### **G.13 WARRANTY**

- A. Supplier warrants that the Supplies shall be free from defects in material and workmanship, of the most suitable grade of their respective kinds for the purpose, and comply with all requirements set forth in this Order, until one year after first placed into service by WSRC, or three years after acceptance, whichever first occurs. Supplier shall correct any nonconformity with this warranty at its sole expense, as directed by WSRC, by promptly: (i) repairing or replacing the nonconforming Supplies specified (and correcting any plans, specifications, or drawings affected); (ii) furnishing WSRC any materials, parts, and instructions necessary to correct or have corrected the nonconformity, or (iii) paying to WSRC a portion of the Order price as is equitable under the circumstances.
- B. Supplier warrants that the Services shall reflect the highest standards of professional knowledge and judgment, shall be free from defects in workmanship, and shall be in compliance with all requirements of this Order, until one (1) year from the completion of the Services. Supplier shall correct any nonconformity with this warranty at its sole expense, as directed by WSRC, by promptly (i) reperforming the nonconforming Services or (ii) paying to WSRC a portion of the Order price as is equitable under the circumstances.
- C. If Supplier fails to perform its obligations promptly under this article, WSRC may perform,

or have performed, such obligations, and Supplier shall pay WSRC all charges occasioned thereby.

- D. The warranty with respect to corrected Supplies or Services shall be subject to the same terms as the warranty provided for in paragraphs A and B of this article. The warranty for other than corrected or replaced Supplies or Services shall continue until the expiration of such period plus a period equal to the time elapsed between the discovery of the nonconformity and its correction.
- E. Unless installation is an element of the Work, Supplier shall not be obligated under this article for the costs of removal or reinstallation of any Supplies furnished or items Serviced hereunder from the location of their installation, or for the costs of removal or reinstallation of structural parts or items not furnished by Supplier hereunder. Supplier shall in any event bear all packing, packaging, and shipping costs from the place of delivery to the Supplier's plant and return to the place of delivery, and shall bear all risk of loss or damage for the items upon which Services have been performed or Supplies while in transit.
- F. Unless decontamination is an element of the Work, in the event that Supplier's costs in correcting any nonconformity under this article are increased solely because the Supplies furnished or items Serviced hereunder must be decontaminated to the level specified in the definition of "radiation area" in 10 CFR 20.202, this Order price shall be equitably adjusted to reflect such additional costs after prompt written notification thereof by Supplier to WSRC.
- G. The provision of this article shall apply notwithstanding inspection, acceptance, or any other provision of this Order, and shall not limit any other of WSRC's rights and remedies.
- H. Latent Defects. In the event the Supplier becomes aware of any latent defect(s) in any item(s) furnished under this Order, the Supplier shall promptly notify the WSRC Procurement Representative. This notice shall provide at a minimum the following information:
  - (1) full description of the item(s);
  - (2) manufacturer, model and/or part number;
  - (3) complete description of the latent defect
  - (4) impact of the defect on the operation of the item(s);
  - (5) action(s) to be taken by WSRC relative to return, re-fit, repair, etc.;
  - (6) date of purchase by WSRC; and,
  - (7) applicable WSRC Order number.

#### **G.14 PERFORMANCE AND PAYMENT BONDS**

- A. The Subcontractor shall furnish a performance bond for the protection of WSRC and the Government in an amount equal to 100 percent of the value of this Order (see Article A.1.N, Definitions), and a payment bond in an amount equal to 50 percent of the value of this Order.
- B. The Subcontractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Buyer, within 10 days after Notice of Award, but in any event, before starting work.
- B. WSRC may require additional performance bond protection when the value of this Order is increased. WSRC may secure additional protection by directing the Subcontractor to increase the penal amount of the existing bond or to obtain an additional bond.
- C. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States.

#### **G.15 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR**

- A. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- B. The subcontractor shall immediately provide WSRC written notice of any changes in the extent and nature of FOCI over the subcontractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to WSRC.
- C. In those cases where a subcontractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Department of Energy shall consider proposals made by the

subcontractor to avoid or mitigate foreign influences.

- D. If the contracting officer at any time determines that the subcontractor is, or is potentially, subject to FOCI, the subcontractor shall comply with such instructions as the contracting officer/WSRC shall provide in writing to safeguard any classified information or special nuclear material.
- E. The subcontractor agrees to insert terms that conform substantially to the language of this article including this paragraph (e) in all lower-tier subcontracts under this subcontract that will require access authorizations for access to classified information or special nuclear material. Additionally, the subcontractor shall require such subcontractors to submit a completed SF328, to the DOE Office of Safeguards and Security (marked to identify the applicable prime contract). Such subcontracts or purchase orders shall not be awarded until the subcontractor is notified that the proposed subcontractors have been cleared. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the DOE contracting officer.
- F. Information submitted by the subcontractor or any affected lower-tier subcontractor as required pursuant to this clause shall be treated by WSRC/DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- G. The requirements of this clause are in addition to the requirement that a subcontractor obtain and retain the employee security clearances required by the subcontract. This clause shall not operate as a limitation on WSRC's rights, including its rights to terminate this subcontract.
- H. WSRC may terminate this subcontract for default either if the subcontractor fails to meet obligations imposed by this article, e.g., provide the information required by this article, comply with WSRC/DOE instructions about safeguarding classified information, or make this article applicable to lower-tier subcontractors, or if, in WSRC's judgment, the subcontractor creates an FOCI situation in order to avoid performance or a termination for default. WSRC may terminate this subcontract for convenience if the subcontractor becomes subject to FOCI and for reasons other than avoidance of performance of the subcontract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

#### **G.16 COUNTERINTELLIGENCE**

- A. The Subcontractor shall take all reasonable precautions in the work under this subcontract to protect WSRC/DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- B. The Subcontractor shall comply with requirements established by the DOE-SR Counterintelligence Officer. The DOE-SR Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of Subcontractor employees traveling to foreign countries or interacting with foreign nationals. The Subcontractor shall be responsible for requesting defensive Counterintelligence briefings and debriefings of Subcontractor employees who have traveled to foreign countries or interacted with foreign nationals. The subcontractor shall coordinate Counterintelligence Awareness training activities with the WSRC Procurement Representative. The Subcontractor shall immediately report targeting, suspicious activity and other Counterintelligence concerns to the WSRC Procurement Representative; and provide assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

*(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available. Reference Article A.41, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

#### **\*G.17 CLASSIFICATION/ DECLASSIFICATION (SEP 1997)**

DEAR 952.204-70

#### **\*G.18 COST ACCOUNTING STANDARDS (CAS) (APR 1999)**

FAR 52.230-2



**\*G.19 ADMINISTRATION OF COST  
ACCOUNTING STANDARDS (NOV 1999)**  
FAR 52.230-6

**\*G.20 DISCLOSURE AND CONSISTENCY OF  
COST ACCOUNTING PRACTICES (APR  
1998)**  
FAR 52.230-3

**\*G.21 PRICE REDUCTION FOR DEFECTIVE  
COST OR PRICING DATA (OCT 1997)**  
FAR 52.215-10

**\*G.22 PRICE REDUCTION FOR DEFECTIVE  
COST OR PRICING DATA—  
MODIFICATIONS (OCT 1997)**  
FAR 52.215-11